

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

FILED  
JAN 25 1996

UNITED STATES OF AMERICA

v.

Case Number 95-CR-131-001-C

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

IVY HUQ  
Defendant.

ENTERED ON DOCKET

DATE 1-26-96

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, IVY HUQ, was represented by Bill Musseman.

On motion of the United States the court has dismissed count(s) 2 of the Indictment.

The defendant pleaded guilty to count(s) 1 of the Indictment on November 8, 1995. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):


<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
7 USC 2024(b)	Unauthorized Acquisition and Possession of Food Stamps	05/17/95	1

As pronounced on January 23, 1996, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 25<sup>th</sup> day of January, 1996.

  
The Honorable H. Dale Cook  
United States District Judge

Defendant's SSN: 619-56-5465

Defendant's Date of Birth: 06/01/54

Defendant's residence and mailing address: 3235 East Archer, Tulsa, OK 74110

United States District Court )  
Northern District of Oklahoma ) SS  
I hereby certify that the foregoing  
is a true copy of the original on file  
in this Court.

Richard M. Lawrence, Clerk

By   
Deputy

Defendant: IVY HUQ  
Case Number: 95-CR-131-001-C

Judgment--Page 2 of 4

### PROBATION

The defendant is hereby placed on probation for a term of 14 month(s).

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: IVY HUQ  
Case Number: 95-CR-131-001-C

Judgment--Page 3 of 4

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 1,000.00. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: IVY HUQ  
Case Number: 95-CR-131-001-C

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	4
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 250 to \$ 5,000
Restitution:	\$ N/A

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 25 1996

Richard M. Lawrence, Court Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KENNETH N. POWELL,

Defendant.

Case No. 91-CR-009-E

ENTERED ON DOCKET

DATE JAN 26 1996

O R D E R

Now before the Court is the Motion for Recovery (Docket #227) of the Defendant Kenneth N. Powell (Powell).

Powell was tried by a jury and convicted of conspiracy to distribute marijuana and sentenced to 292 months imprisonment. His conviction was upheld on appeal. Prior to the trial, numerous items belonging to Powell were seized<sup>1</sup>, and he now is attempting to secure their return pursuant to Rule 41(e), Fed.R.Crim.P., which provides, in pertinent part:

A person aggrieved by an unlawful search and seizure or by the deprivation of property may move the district court for the district in which the property was seized for the return of the property on the ground that such person is entitled to lawful possession of the property.

Rule 41(e) is based on general equitable jurisdiction, and the jurisdiction should be exercised with caution and restraint. Floyd v. United States, 860 F.2d 999 (10th Cir. 1988). A motion under

<sup>1</sup> Powell contends that 1) on March 6, 1989, \$35,000.00 in currency, one 1985 Ford Bronco, one diamond ring, one gold bracelet and one gold necklace was seized; 2) in November, 1989, one 1986 GMC Van and one 1986 Lincoln Town Car was seized; 3) in February, 1991, one Bass and Ski Boat and one 35 foot camper trailer was seized; and 4) on unknown dates various tracts of real property in Mayes County were seized.

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Rule 41(e) should be entertained only if the claimant does not have an adequate remedy at law and can show irreparable injury. Id. A district court would have discretion to dismiss a Rule 41(e) motion where a forfeiture is promptly commenced. See Frazee v. I.R.S., 947 F.2d 448 (10th Cir. 1991). However, a district court also has jurisdiction to consider a due process attack on the forfeiture proceeding. United States v. Woodall, 12 F.3d 791 (8th Cir. 1993).

Here, the government denies that it has some of the property (the jewelry, the bass and ski boat, and the 35 foot camper trailer) which is the subject of this motion, and argues that the Rule 41(e) Motion is inappropriate because the rest of the property was judicially forfeited. The government asserts that it gave Defendant proper notice of the forfeiture in one proceeding (92-C-33-E, involving the real property in Mayes County) and that Defendant was a fugitive from justice and could not be found at the time the other proceeding was commenced (89-C-713-B, involving the currency and the automobiles). Moreover, with respect to Case Number 92-C-33-E, the government points out that Powell had conveyed all of his right title and interest in the property to Martin and Cynthia Rivers who stipulated to the forfeiture of the property, and therefore, he is not entitled to "lawful possession of the property." Powell does not dispute that the property was transferred to the Rivers.

The Court finds that Defendant's Rule 41(e) Motion is denied as to the property that was seized in Case Number 92-C-33-E, because Powell is not a person entitled to "lawful possession of

the property." With respect to the property that the government denies was forfeited and the property seized in Case Number 89-C-713-B, a fact issue exists as to the seizure of the property and as to the adequacy of the notice. The government is directed to address the issue of notice, attaching to its brief documentation of the notice and service on Defendant, and/or information pertaining to Powell's fugitive status on or before February 1, 1996. In addition, the Court directs the government to provide whatever information it possesses regarding the fate of the property which it contends was not forfeited by the federal government.

IT IS SO ORDERED THIS 24<sup>TH</sup> DAY OF JANUARY, 1996.

  
JAMES O. ELLISON, SENIOR JUDGE  
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 25 1996

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSE RAFAEL ABELLO-SILVA

Defendant.

Case No: 87-CR-140-C

ENTERED ON DOCKET

DATE JAN 26 1996

ORDER

The Court has before it the motion of Defendant, JOSE RAFAEL ABELLO-SILVA, for new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure.

Abello was charged by Indictment with violations of the federal narcotics laws of the United States. He was tried, found guilty, and sentenced. Abello appealed the district court proceedings to the United States Court of Appeals for the Tenth Circuit.<sup>1</sup> The Circuit Court made findings on all matters appealed and upheld the actions and proceedings had in the district court.

Abello alleges, in his motion for new trial, that his conviction was "based in large part on the testimony of Boris Olarte and Clara Lacle, the wife of Boris Olarte." In support of these allegations Abello alleges, "Subsequent to the trial, . . . , information has been developed which now establishes that the Defendant ABELLO was convicted as a result of false and perjurious testimony by both of the witnesses in question."

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<sup>1</sup> U.S. v. Abello-Silva, 948 F.2d 1168, 1181 (10th Cir. 1991), cert. denied, 113 S.Ct. 107 (1992).



The essence of Abello's claims is that Olarte was unreliable as a government witness, and Olarte's false testimony caused Abello to be wrongly convicted. Abello goes to great lengths in his motion for new trial and supplemental briefs to demonstrate that Olarte, an admitted drug smuggler, perjured himself for the purpose of advancing his own interests of seeking leniency in prosecution and sentencing in the United States. Abello alleges that the government failed to turn over "substantial impeachment material" concerning the credibility and reliability of Olarte and other witnesses during Abello's trial. Abello points to the fact that United States prosecutors never called Olarte to the witness stand in other drug-related trials because "they doubted his credibility." Abello also asserts that since the trial, a number of other witnesses have been located who "strongly contradict the testimony of a number of Government witnesses presented at the Abello trial."

The Court is obligated to carefully scrutinize a motion for a new trial. "The motion is not regarded with favor and is granted only with great caution, being addressed to the sound discretion of the trial court." U.S. v. Allen, 554 F.2d 398, 403 (10th Cir. 1977), cert. denied, 434 U.S. 836 (1977). In order to prevail on a motion for new trial based upon the ground of newly discovered evidence, the defendant must show: (1) the evidence was discovered after trial, (2) the evidence could not have previously been discovered with reasonable diligence, (3) the evidence is material to the issues involved, (4) the evidence will probably produce an

acquittal, and (5) the evidence must be more than impeaching or cumulative. Id. See also, U.S. v. Stevens, 978 F.2d 565, 570 (10th Cir. 1992).

The Court has painstakingly endeavored to review the voluminous record of testimony presented in Abello's trial, as well as the briefs and exhibits submitted in connection with this motion. Upon such review, the Court concludes that Olarte's testimony was not essential to Abello's ultimate conviction, despite Abello's contentions to the contrary.<sup>2</sup> There is overwhelming evidence which establishes Abello's guilt with respect to the crimes charged. It cannot be said that Olarte's testimony was the critical factor which led to Abello's conviction. The testimony of several other witnesses establishes that Abello committed the acts which were charged in the indictment against him. Even without much of Olarte's testimony, a reasonable jury could indeed conclude, beyond a reasonable doubt, that Abello is guilty as charged.

The jury was in the position to judge the credibility of each witness, and to assign the weight given to the witnesses' respective testimony. The defense vigorously cross-examined each of the government's witness, and succeeded in exposing potential bias and lack of credibility. The jury, however, determined that Abello was guilty, despite the potential credibility problem of

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<sup>2</sup> As noted *infra*, Olarte's testimony concerning Abello's activities in the drug business was not the determining factor that resulted in Abello's conviction. Rather, Olarte's testimony was important, if at all, for the limited purpose of establishing a connection between Abello and the Northern District of Oklahoma.

several of the witnesses. The defense made certain that the jury was aware that many of the witnesses were involved, in some way or another, in the illicit drug business, and that some witnesses had made deals with the government in exchange for their cooperation.

As the Tenth Circuit noted in Abello's appeal, "[t]he exposure of Olarte's felony convictions and extensive criminal involvement in the drug trade . . . creates two lasting impressions upon the jury. First, Olarte is a celebrated criminal whose character is suspect; second, Olarte is indebted to the government and continues to benefit from testifying against former co-conspirators. . . . Abello expanded on these two themes to impeach the witness' credibility in the eyes of the jury." U.S. v. Abello-Silva, 948 F.2d 1168, 1181 (10th Cir. 1991). The Circuit Court stated that "Olarte repeatedly admitted he was testifying to avoid spending time in jail. Olarte admitted he had lied in previous trial appearances for his own benefit. [The defense] . . . used transcripts from Olarte's previous testimony to expose inconsistencies in his present testimony on numerous subjects." Id. Olarte also testified that he planned a "jail-break" from the Tulsa county jail with the aid of armed mercenaries. "The record is replete with impeachment evidence against Olarte." Id.

It is therefore extremely difficult for this Court to understand Abello's contention that Olarte was not adequately discredited before the jury. Abello fails to convince this Court that the outcome of his trial would have been any different had Abello been granted access to the "newly discovered" information

which the government allegedly failed to disclose during Abello's trial. Abello contends that the government "possessed information which totally undermined the reliability and credibility of Boris Olarte," but, aside from such general allegations, Abello does not offer much specific information to support these assertions. The material which Abello does offer primarily attempts to further impeach and discredit Olarte, and it is not at all clear that such material was wrongfully withheld from Abello during his trial. Since the testimony of others is so overwhelming, the Court is of the opinion that Abello would have been convicted even if Abello had introduced everything which he now seeks to introduce in a new trial.

As noted previously, Olarte's testimony was not crucial to Abello's guilt, and the only significance Olarte has in this case concerns the connection between the Northern District of Oklahoma and Abello. After intensive cross-examination and vigorous impeachment, the jury chose to believe the combined testimony of the government's witnesses. Hence, the Court concludes that Abello failed to satisfy the requirements for a new trial. Specifically, Abello failed to demonstrate that this "newly discovered" evidence is any more than cumulative and impeaching, that such evidence is material, and that such evidence would probably produce an acquittal.<sup>3</sup>

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<sup>3</sup> The Court also questions whether this proffered evidence is in fact evidence which could not have been discovered until after trial, despite the aid of due diligence. It is evident from the record that Abello had access to much of this information at trial. It is also apparent that Abello raised several items at trial and

Abello also seeks a new trial based upon several "newly discovered" witnesses whose proposed testimony may allegedly discredit many of the government's witnesses. Abello's briefs demonstrate that several of these "newly discovered" witnesses are in fact associates and relatives of Abello, who were known to Abello both before and during his trial. It is also apparent from Abello's briefs that Abello knew, during his trial, the substance of the proposed testimony. The Court therefore has trouble understanding how these witnesses can now be labeled as "newly discovered."

It appears from Abello's briefs that many of these "newly discovered" witnesses were asked by Abello to testify in his behalf at trial. However, some of the witnesses refused to travel to the United States during Abello's trial for fear of arrest and prosecution by the United States on drug-related charges. Abello's briefs show that some of these "newly discovered" witnesses were denied a request for immunity from the United States during Abello's trial, and therefore refused to appear. At least one of these proposed witnesses was a fugitive during Abello's trial, and two others were named as unindicted co-conspirators. Several years after Abello's trial, these witnesses are suddenly available to testify in his behalf, presumably because the statute of

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elicited testimony on cross examination concerning issues which the government did not explore on direct examination, such as the testimony regarding Stanly Birch, Javier Cardenas, and the 120 kilograms of cocaine. This information is contained in the FBI's 302 report, which Abello contends the government failed to disclose.

limitations has run, and they are now immune from prosecution in the United States. To grant Abello's request for a new trial under such circumstances would greatly offend our system of justice and procedure, as well as seriously undermine the finality of verdicts. Such would allow confederates of an accused to avoid prosecution during the accused's trial, while later attempting to exonerate the accused by offering to testify in his behalf once the statute of limitations has run on their wrongdoing. Such an arrangement is clearly unacceptable.

With respect to the other proposed witnesses who were not concerned about prosecution, Abello fails to demonstrate that they are now "newly discovered." On the contrary, Abello's briefs indicate that these proposed witnesses were known to Abello before and during trial and that Abello knew the content of their proposed testimony at that time. Furthermore, it is apparent that Abello previously did not request the attendance of at least one proposed witness at his trial even though such witness was known to Abello at that time. This Court does not therefore consider any of these proposed witnesses as being newly discovered.

Abello argues that, even if these witnesses are not "newly discovered," they were not available to testify during his trial, as they reside outside the United States and are not subject to the compulsion of a subpoena. Even if the Court were to accept this argument, the Court nevertheless "rejects the notion that newly available evidence is synonymous with newly discovered evidence for purposes of a motion for a new trial." U.S. v. Perez-Paredes, 678

F.Supp. 259, 261 (S.D.Fla. 1988) (citing, U.S. v. Metz, 652 F.2d 478, 480 (5th Cir. 1981)). See also, U.S. v. DiBernardo, 880 F.2d 1216 (11th Cir. 1989), cert. denied, 476 U.S. 1105 (1986) (newly available testimony is not synonymous with newly discovered evidence); U.S. v. Muldrow, 19 F.3d 1332, 1339 (10th Cir. 1994), cert. denied, 115 S.Ct. 175 (1994) (citing, Metz and DiBernardo). Even though these witnesses reside outside the United States, the fact that they chose not to testify in behalf of Abello at his trial does not require this Court to now grant a new trial simply because these witnesses have had a change of heart and have recently decided to testify. In any event, the Court does not find that this proffered testimony would probably result in the acquittal of Abello, given the overwhelming evidence demonstrating his guilt.

Abello also alleges that the modifications to the extraditing indictment from Columbia, subsequent to the delivery of Abello to the United States, violates international law. This argument was considered and rejected by the Tenth Circuit. See, Abello-Silva, 948 F.2d at 1174-1176. As the Circuit Court noted, "[c]ount one of the second superseding indictment charges Abello with committing the same offenses and lists the identical code sections" as the first count in the extradition request. "Likewise, the second offense alleged in the extradition request mirrors the offense set out in the second superseding indictment." Hence, if "the Columbian government was satisfied by the first indictment and granted the extradition request, it would not object to prosecution

for the same offenses under the second indictment when the second indictment presented an even stronger case." Id.

Accordingly, Abello's motion for a new trial is hereby DENIED.

IT IS SO ORDERED this 25<sup>th</sup> day of January, 1996.

A handwritten signature in black ink, appearing to read "H. Dale Cook", written over a horizontal line.

H. DALE COOK  
U.S. District Judge



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

FILE

JAN 25 1996

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA  
Plaintiff

VS

MARIO DELMORAL

Defendant

Case Number: 93-CR-014-001-C ✓

ENTERED ON DOCKET

DATE JAN 26 1996

MODIFIED ORDER REVOKING PROBATION AND SENTENCING

Now on this 12th day of January 1995, this cause comes on for sentencing after a finding that the defendant violated conditions of probation as set out in the Petition on Probation and Supervised Release filed in open Court on September 30, 1994. The defendant is present in person and represented by counsel, Richard Couch, the Government by Alan Litchfield, Assistant U.S. Attorney, and the United States Probation Office is represented by Officer Frank M. Coffman.


On October 18, 1993, the defendant pled guilty to a one-count Information filed in the Northern District of Oklahoma, which charged him with Failure to Maintain Record of Firearm Transfer and Aiding and Abetting [18 U.S.C. § § 922(m) and 924(a)(3)(B) and 2]. On December 16, 1993, Delmoral was sentenced to a two (2) year term of probation, ordered to pay a \$1,000.00 fine, and a \$25.00 special monetary assessment.

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On November 22, 1994, a revocation hearing was held regarding the allegations noted in the Petition on Probation and Supervised Release. The Court made a finding that the defendant violated his conditions of probation as memorialized in the Petition. Sentencing was scheduled for January 12, 1995, at 1:45 p.m.

It is adjudged and ordered that the defendant shall be sentenced to serve eight (8) months in the custody of the Bureau of Prisons. The Court recommends that the Federal Bureau of Prisons allow the defendant to participate in substance abuse treatment while incarcerated.

The defendant is remanded to the U.S. Marshal upon the completion of his Oklahoma State custody sentence.

  
The Honorable H. Dale Cook  
U.S. District Judge

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

FILE  
JAN 30 1996

UNITED STATES OF AMERICA

v.

Case Number 95-CR-104-001-BU

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

PATRICIA LYNN TILLIS  
Defendant.

ENTERED ON DOCKET

DATE 1-30-96

JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)

The defendant, PATRICIA LYNN TILLIS, was represented by Stephen J. Knorr.

On motion of the United States the court has dismissed count(s) 2 through 21 of the Indictment.

The defendant pleaded guilty to count(s) 1 of the Indictment on October 26, 1995. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):


Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 1001 and 2(b)	False Statement to Government Agency & Causing a Criminal Act	11/14/90	1

As pronounced on January 19, 1996, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Indictment, which shall be due immediately.

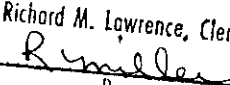
It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 30<sup>th</sup> day of January, 1996.

  
The Honorable Michael Burrage  
United States District Judge

Defendant's SSN: 441-70-5918  
Defendant's Date of Birth: 09/13/61  
Defendant's residence and mailing address: 2505 E. 88th St., Tulsa, OK 74137

United States District Court )  
Northern District of Oklahoma ) SS  
I hereby certify that the foregoing  
is a true copy of the original on file  
in this Court.

Richard M. Lawrence, Clerk  
By   
Deputy

Defendant: PATRICIA LYNN TILLIS  
Case Number: 95-CR-104-001-BU

Judgment--Page 2 of 4

### PROBATION

The defendant is hereby placed on probation for a term of 5 year(s).

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of 6 months, to commence within five (5) days of sentencing date. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office.

### STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: PATRICIA LYNN TILLIS  
Case Number: 95-CR-104-001-BU

Judgment--Page 3 of 4

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$1980.00.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
Department of Human Services Revenue Processing Unit Attn: AFDC Case No. C122416 P.O. Box 36357 Oklahoma City, OK 73136	\$1,620
Tulsa Housing Authority 415 East Independence Ave. Tulsa, OK 74106	\$ 360

Payments of restitution are to be made to the United States Attorney for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: PATRICIA LYNN TILLIS  
Case Number: 95-CR-104-001-BU

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	10
Criminal History Category:	I
Imprisonment Range:	6 months to 12 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 2,000 to \$ 20,000
Restitution:	\$ 32,739.70

The fine is waived or is below the guideline range because of the defendant's inability to pay.

Full restitution is not ordered for the following reason(s): The defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

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FILED

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

JAN 30 1996

UNITED STATES OF AMERICA

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

v.

Case Number 95-CR-112-001-BU

LAMAR LOWE aka: Lamar Robinson  
Defendant.

ENTERED ON DOCKET

DATE 1-30-96**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, LAMAR LOWE aka: Lamar Robinson, was represented by Richard Amatucci.

On motion of the United States the court has dismissed count(s) 1 of the Indictment.

The defendant pleaded guilty to count(s) 2 of the Indictment on December 4, 1995. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 924(c)(1)	Possession of a Firearm During Commission of a Violent Crime	05/24/91	2

As pronounced on January 19, 1996, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 2 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 30<sup>th</sup> day of January, 1996.

*Michael Burrage*  
 The Honorable Michael Burrage  
 United States District Judge

United States District Court )  
Northern District of Oklahoma ) SSI hereby certify that the foregoing  
is a true copy of the original on file  
in this Court.

Richard M. Lawrence, Clerk

By *R. Muller*  
Deputy

Defendant's SSN: 571-93-6850

Defendant's Date of Birth: 08/25/72

Defendant's residence and mailing address: 600 S. Denver, C/O Tulsa County Jail, Tulsa, OK 74103

Defendant: LAMAR LOWE aka: Lamar Robinson  
Case Number: 95-CR-112-001-BU

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 120 months on Count 2; to run consecutively to the sentences imposed in ND/OK, case numbers 93-CR-035-002-C and 94-CR-073-001-B.

The defendant is remanded to the custody of the United States Marshal.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal



Defendant: LAMAR LOWE aka: Lamar Robinson  
Case Number: 95-CR-112-001-BU

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years to run concurrently with the terms of supervised release in 93-CR-035-002-C and 94-CR-073-001-B.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: LAMAR LOWE aka: Lamar Robinson  
Case Number: 95-CR-112-001-BU

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$20,382.00 on Count 2.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
Moody's Jewelers Attn: Earnest Moody 3350 E. 51st St. Tulsa, OK 74112	\$5,000.00
Jeweler's Mutual Attn: Earnest Moody 3350 E. 51st St. Tulsa, OK 74112	\$15,383.00

Payments of restitution are to be made to the United States Attorney for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release. It is further ordered that the defendant pay restitution jointly and severally with any other person in related cases who has been or may be ordered in the future to pay restitution to these victims for these offenses. In no event shall the victims receive more than \$20,382 from the sum total of all restitution payments. Any payment shall be divided proportionately among the payees named.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: LAMAR LOWE aka: Lamar Robinson  
Case Number: 95-CR-112-001-BU

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	N/A
Criminal History Category:	N/A
Imprisonment Range:	240 months - Ct. 2
Supervised Release Range:	2 to 3 years - Ct. 2
Fine Range:	Up to \$ 250,000 - Ct. 2
Restitution:	\$ 20,382.00

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence departs from the guideline range: Upon motion of the government, as a result of defendant's substantial assistance.

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

FILED

JAN 30 1996

UNITED STATES OF AMERICA

v.

Case Number 95-CR-114-001-BU

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

JASON MICHAEL JABARA  
Defendant.

ENTERED ON DOCKET

DATE 1-30-96

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, JASON MICHAEL JABARA, was represented by Craig Bryant.

On motion of the United States the court has dismissed count(s) 2 - 5 of the Indictment.

The defendant pleaded guilty to count(s) 1 of the Indictment on October 26, 1995. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

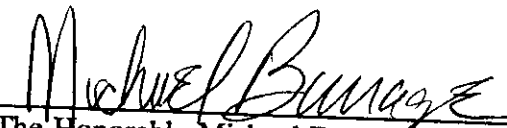
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1029	Use of Unauthorized Access Device	03/04/94	1

As pronounced on January 19, 1996, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 30<sup>th</sup> day of January, 1996.

  
The Honorable Michael Burrage  
United States District Judge

Defendant's SSN: 406-88-5945

Defendant's Date of Birth: 03/24/72

Defendant's residence and mailing address: 3523 E. 64th St., Tulsa, OK 74112

1-30-96  
Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

By R. Lawrence  
Richard M. Lawrence, Clerk

Defendant: JASON MICHAEL JABARA  
Case Number: 95-CR-114-001-BU

Judgment--Page 2 of 4

### PROBATION

The defendant is hereby placed on probation for a term of 2 year(s).

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: JASON MICHAEL JABARA  
Case Number: 95-CR-114-001-BU

Judgment--Page 3 of 4

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$1778.24 as to Count 1.

The defendant shall make restitution to the following persons in the following amounts:

**Name of Payee**

**Amount of Restitution**

American Express  
Attn: Acct. #3731 20105383009  
6712 Washington Ave. - Suite 210  
Pleasantville, New Jersey 08232

\$1,778.24

Payments of restitution are to be made to the United States Attorney for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: JASON MICHAEL JABARA  
Case Number: 95-CR-114-001-BU

Judgment--Page 4 of 4

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	8
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months - Ct. 1
Supervised Release Range:	2 to 3 years - Ct. 1
Fine Range:	\$ 1,000 to \$ 10,000 - Ct. 1
Restitution:	\$ 1,778.24

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

dfu

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

FILE

JAN 25 1996

Richard M. Lawrence, C  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

v.

Case Number 95-CR-096-001-C

ROBERT ELLIS HUTTON  
Defendant.

JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)

ENTERED ON JUDGMENT

DATE 1-26-96

The defendant, ROBERT ELLIS HUTTON, was represented by Terry Malloy.

On motion of the United States the court has dismissed count(s) 5 through 19 of the Indictment.

The defendant pleaded guilty to count(s) 1, 2, 3, and 4 of the Indictment on September 20, 1995. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

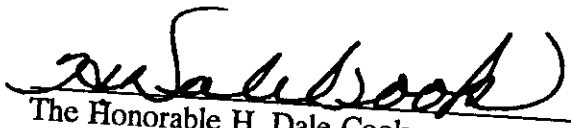
Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 152	Concealing Property Belonging to Estate of Debtor from Bankruptcy Trustee	01/26/94	1,2,3,4

As pronounced on January 19, 1996, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 200.00, for count(s) 1,2,3,4, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.


Signed this the 25th day of Jan, 1996.

  
The Honorable H. Dale Cook  
United States District Judge

Defendant's SSN: 445-60-7158  
Defendant's Date of Birth: 11/08/55  
Defendant's residence and mailing address: 2667 S. Boston Place, Tulsa, OK

United States District Court ) SS  
Northern District of Oklahoma )

I hereby certify that the foregoing  
is a true copy of the original on file  
in this Court.

By Richard M. Lawrence, Clerk  
By   
Deputy



Defendant: ROBERT ELLIS HUTTON  
Case Number: 95-CR-096-001-C

Judgment--Page 2 of 5

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 5 months as to each of Counts 1,2,3, and 4; to run concurrently each with the other.

The Court makes the following recommendations to the Bureau of Prisons: The Court recommends the defendant be allowed to serve his custody term at the Freedom Ranch in Tulsa, Oklahoma, or a like facility in the Tulsa, Oklahoma area.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 9:00 a.m. on February 26, 1996.

### RETURN

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: ROBERT ELLIS HUTTON  
Case Number: 95-CR-096-001-C

Judgment--Page 3 of 5

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years as to each of Counts 1,2,3, and 4; to run concurrently each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of 5 months, to commence within 72 hours of release from confinement. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The entire cost of this program shall be paid by the defendant.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: ROBERT ELLIS HUTTON  
Case Number: 95-CR-096-001-C

Judgment--Page 4 of 5

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$34,135.64 on Count 1.

The defendant shall make restitution to the following persons in the following amounts:

**Name of Payee**

**Amount of Restitution**

Petra Petroleum Corp.  
C/O Kenneth L. Stainer, Trustee  
406 S. Boulder, Suite 600  
Tulsa, OK 74103

\$15,458.97

Petra Trust I & II  
C/O Richard Shallcross, Trustee  
2021 S. Lewis  
Tulsa, OK

\$18,676.67

Payments of restitution are to be made to the United States Attorney for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

At the time of sentencing, the Court determined the total amount of restitution owed on Count One to be \$30,263.22. Upon an objection filed by the defendant, the Court ordered additional inquiries to be made by the U.S. Probation Office. The U.S. Probation Office determined the total amount of restitution owed by the defendant exceeded \$30,263.22. On January 24, 1996, a meeting was held between the defendant, defense counsel Terry Malloy, and the U.S. Probation Office. All parties agreed that the total restitution owed on Count One is \$34,135.64. The Court takes note that the defendant believes restitution payments may have been made that were not included on this Order. Should investigation by the U.S. Probation Office reveal restitution payments were made by the defendant that were not included on this order, the Court will amend the Order to reduce the restitution owed by this amount.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: ROBERT ELLIS HUTTON  
Case Number: 95 CR-096-001-C

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	12
Criminal History Category:	I
Imprisonment Range:	10 months to 16 months - Cts. 1,2,3,4
Supervised Release Range:	2 to 3 years - Cts. 1,2,3,4
Fine Range:	\$ 3,000 to \$ 30,000 - Cts. 1,2,3,4
Restitution:	\$ 30,262.22

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA )

Plaintiff )

VS. )

MICHAEL PAUL SINCLAIR )

Defendant )

ENTERED IN DOCKET

DATE JAN 24 1996

Case No. 95-CR-060-002-H ✓

**FILED**

JAN 23 1996

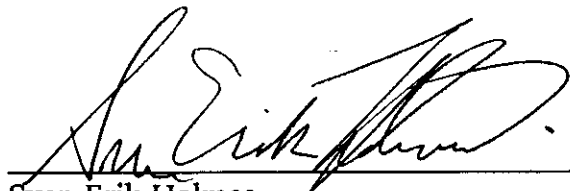
ORDER

Richard M. Lawrence, Court Clerk  
U.S. DISTRICT COURT

On January 23, 1996, judgment and sentence was imposed upon the defendant's conviction in Counts One and Five of the Superseding Indictment. The Court, inadvertently, ordered payment of a \$4,000 fine as to Count Four. Pursuant to Fed. R. Crim. P. 35(c), the Court now corrects the sentence that was imposed as a result of error.

It is hereby ordered that the defendant shall pay a fine in the amount of \$4,000 as to Count Five of the Superseding Indictment, rather than Count Four as stated in open court.

It is so ordered this 23<sup>rd</sup> day of January, 1996.

  
Sven Erik Holmes  
United States District Judge

133

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

FILED

JAN 23 1996

By: Richard M. Lawrence, Clerk  
U.S. District Court

UNITED STATES OF AMERICA

v.

Case Number 95-CR-061-001-B

ENTERED ON DOCKET

DATE 1-24-96

CHRISTOPHER PAUL BROWN  
Defendant.

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, CHRISTOPHER PAUL BROWN, was represented by James Fransein.

The defendant pleaded guilty to count(s) 1 of the Indictment on October 19, 1995. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

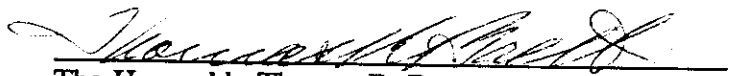
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
21 USC 841(a)(1)	Possession With Intent to Distribute Cocaine Base	04/25/95	1

As pronounced on January 19, 1996, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

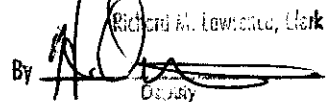
It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 23<sup>rd</sup> day of January, 1996.

  
The Honorable Thomas R. Brett,  
Chief United States District Judge

United States District Court )  
Northern District of Oklahoma ) SS  
I hereby certify that the foregoing  
is a true copy of the original on file  
in this Court.

By  Richard M. Lawrence, Clerk  
CLERK

Defendant's SSN: 448-70-9568

Defendant's Date of Birth: 04/04/70

Defendant's mailing address: C/O Tulsa County Jail, 600 Civic Center, Tulsa, OK 74103

Defendant's residence address: 3216 N. Wheeling, C/O C.P. and Olivia Jackson, Tulsa, OK 74110

Defendant: CHRISTOPHER PAUL BROWN  
Case Number: 95-CR-061-001-B

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 135 months.

The defendant is remanded to the custody of the United States Marshal.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: CHRISTOPHER PAUL BROWN  
Case Number: 95-CR-061-001-B

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.



Defendant: CHRISTOPHER PAUL BROWN  
Case Number: 95-CR-061-001-B

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 2,500.00. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: CHRISTOPHER PAUL BROWN  
Case Number: 95-CR-061-001-B

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	31
Criminal History Category:	III
Imprisonment Range:	135 months to 168 months
Supervised Release Range:	5 years
Fine Range:	\$ 15,000 to \$ 4,000,000
Restitution:	\$ N/A

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reason(s): The Court imposes a sentence at the low end of the range due to the defendant's cooperation with law enforcement officials in the investigation of other criminal matters.

*ew*

UNITED STATES DISTRICT COURT **FILE 1**  
Northern District of Oklahoma

JAN 28 1996

UNITED STATES OF AMERICA

v.

Case Number 95-CR-121-B

SHARON KAYE SMITH  
Defendant.

ENTERED ON DOCKET

DATE 1-24-96

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, SHARON KAYE SMITH, was represented by Stephen Greubel.

On motion of the United States the court has dismissed count(s) 2,3, & 4.

The defendant pleaded guilty to count(s) 1 of the Indictment on October 17, 1995. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

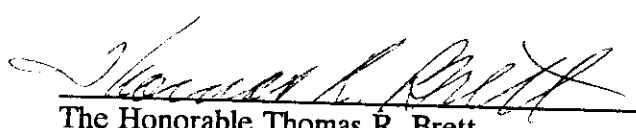
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1344(1)	Bank Fraud	12/28/95	1

As pronounced on January 19, 1996, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

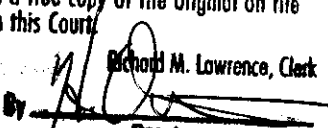
It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 23rd day of January, 1996.

  
The Honorable Thomas R. Brett  
Chief United States District Judge

Defendant's SSN: 440-76-3274  
Defendant's Date of Birth: 09/24/64  
Defendant's residence and mailing address: 2306 S. 106th E. Ave., Tulsa, OK 74129

United States District Court )  
Northern District of Oklahoma ) SS  
I hereby certify that the foregoing  
is a true copy of the original on file  
in this Court.  
By  Richard M. Lawrence, Clerk  
Deputy

Defendant: SHARON KAYE SMITH  
Case Number: 95-CR-121-B

Judgment--Page 2 of 5

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 1 month.

The Court makes the following recommendations to the Bureau of Prisons: The Court recommends that the Bureau of Prisons designate the Freedom House in Tulsa, Oklahoma, as the place of confinement for the custody portion of this sentence.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 noon on February 19, 1996.

### RETURN

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: SHARON KAYE SMITH  
Case Number: 95-CR-121-B

Judgment--Page 3 of 5

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 4 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of 5 months, to commence within 72 hours of release from confinement. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The entire cost of this program shall be paid by the defendant.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the

Defendant: SHARON KAYE SMITH  
Case Number: 95-CR-121-B

Judgment--Page 4 of 5

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$8,104.94.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
Communication Federal Credit Union Attn: Leslie Kidd - Internal Audit 4141 Northwest Expressway Oklahoma City, Oklahoma 73116	\$8,104.94

Payments of restitution are to be made to the United States Attorney for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: SHARON KAYE SMITH  
Case Number: 95-CR-121-B

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	10
Criminal History Category:	I
Imprisonment Range:	6 months to 12 months
Supervised Release Range:	3 to 5 years
Fine Range:	\$ 2,000 to \$ 1,000,000
Restitution:	\$ 8,104.94

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

*14*

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

ENTERED ON DOCKET

UNITED STATES OF AMERICA

DATE 1-19-96

v.

Case Number 95-CR-063-001-K

CARL DEE CHISM  
Defendant.

**FILED**

JAN 19 1996

**JUDGMENT IN A CRIMINAL CASE**

(For Offenses Committed On or After November 1, 1987)

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT

The defendant, CARL DEE CHISM, was represented by Regina Stephenson.

On motion of the United States the court has dismissed count(s) 1 of the Indictment.

The defendant pleaded guilty on July 14, 1995, to count(s) 2 of the Indictment. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18:924(c)	Use of a Firearm During and in Relation to a Drug Trafficking Crime	04/11/95	2

As pronounced on January 12, 1996, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50, for count(s) 2 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 18 day of January, 1996.

  
The Honorable Terry C. Kern  
United States District Judge

Defendant's SSN: 444-88-3947

Defendant's Date of Birth: 08/09/69

Defendant's residence and mailing address: 10110 North New Haven, Sperry, OK 74107



Defendant: CARL DEE CHISM  
Case Number: 95-CR-063-001-K

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 60 months.

The Court makes the following recommendations to the Bureau of Prisons: The Court recommends that the Bureau of Prisons designate the El Reno Camp as the place of incarceration for this sentence.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before noon on February 12, 1996

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: CARL DEE CHISM  
Case Number: 95-CR-063-001-K

Judgment--Page 3 of 5

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.

### **STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: CARL DEE CHISM  
Case Number: 95-CR-063-001-K

Judgment--Page 4 of 5

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 500. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: CARL DEE CHISM  
Case Number: 95-CR-063-001-K

Judgment--Page 5 of 5

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	N/A
Criminal History Category:	N/A
Imprisonment Range:	60 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 0 to \$ 250,000
Restitution:	\$ N/A

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

07/01

UNITED STATES DISTRICT COURT

Northern District of Oklahoma

UNITED STATES OF AMERICA

DATE 1-19-96

v.

Case Number 95-CR-109-001-K

GILBERT WESLEY HARNEY  
Defendant.

FILED

JAN 19 1996

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT

The defendant, GILBERT WESLEY HARNEY, was represented by Steve Knorr.

On motion of the United States the court has dismissed count(s) 2 of the Information.

The defendant pleaded guilty to count(s) 1 of the Information on October 11, 1995. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1341	Mail Fraud	07/06/95	1

As pronounced on January 10, 1996, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 17 day of January, 1996.

  
The Honorable Terry C. Kern  
United States District Judge

Defendant's SSN: 444-56-7570

Defendant's Date of Birth: 04/11/53

Defendant's residence and mailing address: 1169 N. 166th E. Ave., Tulsa, Oklahoma 74116

Defendant: GILBERT WESLEY HARNEY  
Case Number: 95-CR-109-001-K

### PROBATION

The defendant is hereby placed on probation for a term of 5 year(s).

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. The defendant shall participate in a program of mental health treatment (to include inpatient), as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Officer.
4. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of 5 months, to commence within 72 hours of sentencing date. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
6. The defendant shall, as directed by the probation officer, correspond with all credit reporting agencies and accurately report his conduct relative to Don Meredith's credit accounts, for the purpose of restoring said victim's credit rating.
7. The defendant shall return all personal financial, credit, and banking information that he has on past Prudential customers to a representative of Prudential, as directed by the U.S. Probation Office.

### STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: GILBERT WESLEY HARNEY  
Case Number: 95-CR-109-001-K

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$13,461.07.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
First Union National Bank Attn: Corinne Adams 1525 West W.T. Harris Blvd. Charlotte, N.C. 28269-8512	\$8,481.07
M.B.N.A. Attn: Debbie Kinney P.O. Box 15730 Wilmington, Delaware 19885-5730	\$4,980.00

Payments of restitution are to be made to the United States Attorney for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: GILBERT WESLEY HARNEY  
Case Number: 95-CR-109-001-K

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	9
Criminal History Category:	I
Imprisonment Range:	4 months to 10 months
Supervised Release Range:	N/A
Fine Range:	\$ 1,000 to \$ 10,000
Restitution:	\$ 13,461.07

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.



UNITED STATES DISTRICT COURT **FILED**  
Northern District of Oklahoma

JAN 18 1996

UNITED STATES OF AMERICA

Richard M. Lawrence, Court Clerk  
U.S. DISTRICT COURT

v.

Case Number 95-CR-107-001-W

MARLO McCULLOUGH  
Defendant.

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, MARLO McCULLOUGH, was represented by Stephen J. Knorr.

The defendant pleaded guilty on October 4, 1995, to count(s) 1 of the Information. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

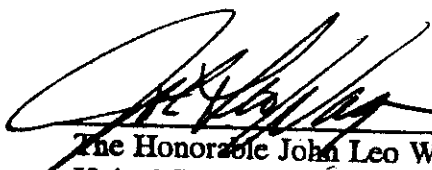
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18:656	Misapplication of Funds, a Misdemeanor	02/28/95	1

As pronounced on January 17, 1996, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 25, for count(s) 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 17<sup>th</sup> day of January, 1995.

  
The Honorable John Leo Wagner  
United States Magistrate Judge

United States District Court ) SS  
Northern District of Oklahoma )

I hereby certify that the foregoing  
is a true copy of the original on file  
in this Court.

Richard M. Lawrence, Clerk  
By   
Deputy

Defendant's SSN: 442-94-6393

Defendant's Date of Birth: 11/02/72

Defendant's residence and mailing address: 5616 E. 71st Street #1312, Tulsa, OK 74135

Defendant: MARLO McCULLOUGH  
Case Number: 95-CR-107-001-W

Judgment--Page 2 of 4

### PROBATION

The defendant is hereby placed on probation for a term of 2 year(s).

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: MARLO McCULLOUGH  
Case Number: 95-CR-107-001-W

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$1,500.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
Liberty Bank & Trust 15 E 5th Street Tulsa, OK 74103	\$1,500

Payments of restitution are to be made to the United States Attorney for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: MARLO McCULLOUGH  
Case Number: 95-CR-107-001-W

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	6
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months
Supervised Release Range:	1 to years
Fine Range:	\$ 500 to \$ 5,000
Restitution:	\$ 1,500

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 17 1996

Richard M. Lawrence, Court Clerk  
U.S. District Court

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DONALD EUGENE LINVILLE,

Defendant.

No. 86-CR-48-B ✓  
(95-C-587-B)

ENTERED ON DOCKET

DATE JAN 18 1996

ORDER

This matter comes before the Court on Donald Eugene Linville's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Also before the Court are Linville's motions for appointment of counsel, for summary judgment, and to amend and add information to his section 2255 motion.

Linville alleges that the judgment of conviction based upon his guilty plea violates his Fifth Amendment rights pursuant to the Double Jeopardy Clause. He contends that, because the government previously had forfeited his Maserati Biturbo in connection with this case, a subsequent criminal prosecution constituted double jeopardy. He also alleges his court appointed counsel was ineffective for failing to raise a speedy trial claim at trial. Lastly, he alleges he did not understand the consequences of his plea because the plea bargain mentioned neither the \$5,000 fine nor the five-year supervised release.

In April 1986, Defendant was charged in a multi-count indictment. In January 1987, his Maserati Biturbo was forfeited by the government. On August 23, 1993, after being a fugitive from justice for seven years, Linville pleaded guilty to one count of

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continuing criminal enterprise and one count of conspiracy to impair and impede the Internal Revenue Service. He was sentenced on October 13, 1993, to 12 years in prison followed by five years of supervised release, and a \$5000 fine.

## I. ANALYSIS

### A. Double Jeopardy

Because Linville's double jeopardy claim could properly have been raised on direct appeal, the Court raises sua sponte the doctrine of procedural default. United States v. Cook, 997 F.2d 1312, 1320 (10th Cir. 1993) (federal court can raise procedural bar sua sponte). It is well settled that "[s]ection 2255 motions are not available to test the legality of matters which should have been raised on direct appeal." United States v. Warner, 23 F.3d 287, 291 (10th Cir. 1994) (citation omitted). Consequently, a defendant's failure to present an issue on direct criminal appeal bars him from raising that issue in his section 2255 motion, unless he can show cause excusing his procedural default and actual prejudice resulting from the errors of which he complains, or can show that a fundamental miscarriage of justice will occur if his claim is not addressed. Cook, 997 F.2d at 1320.

Defendant has not shown cause and prejudice to excuse his procedural default. In any event, Linville would not be entitled to relief. There is a split of authority as to whether civil forfeitures constitute punishment for purposes of double jeopardy analysis. Linville urges the Court to follow the Ninth Circuit,

which holds that separate civil forfeiture proceedings are "punishment" that triggers double jeopardy. United States v. \$405,089.23, 33 F.3d 1210 (9th Cir. 1994).

The bulk of authority, however, holds that civil forfeitures do not trigger double jeopardy. See United States v. United States Currency, 18 F.3d 73 (2d Cir. 1994); United States v. Tilley, 18 F.3d 295 (5th Cir. 1994); United States v. Torres, 28 F.3d 1463 (7th Cir. 1994); United States v. One Single Family Residence, 13 F.3d 1493 (11th Cir. 1994); Securities and Exchange Commission v. Bilzerian, 29 F.3d 689 (D.C. Cir. 1994). These courts reason that

forfeiture of proceeds of illegal drug sales serves the wholly remedial purposes of reimbursing the government for the costs of detection, investigation, and prosecution of drug traffickers and reimbursing society for the costs of combatting the allure of illegal drugs, caring for the victims of the criminal trade when preventative efforts prove unsuccessful, lost productivity, etc.

Tilley, 18 F.3d at 299. These courts hold that forfeiture is a remedial procedure, not a punitive one; therefore, there are no successive punishments that would trigger double jeopardy. The Court believes these circuits have the better view.<sup>1</sup>

Further, Linville did not contest the forfeiture of his vehicle in the civil proceeding. The Seventh Circuit in Torres found that jeopardy does not attach in such a situation:

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<sup>1</sup>The Court also notes that the burden of proof applied in civil forfeiture cases differs from that of a criminal proceeding. The government is required to show only probable cause to believe that the property is subject to forfeiture. In a criminal proceeding, however, the government must prove guilt beyond a reasonable doubt. United States v. Michelle's Lounge, 39 F.3d 684 (7th Cir. 1994).

[T]here was no trial; the [money] was forfeited without opposition, and jeopardy did not attach. You can't have double jeopardy without a former jeopardy... As a non-party, Torres was not at risk in the forfeiture proceeding, and 'without risk of a determination of guilt, jeopardy does not attach, and neither an appeal nor further prosecution constitutes double jeopardy.'

Torres, 28 F.3d at 1465, citing Serfass v. United States, 420 U.S. 377, 389, 95 S.Ct. 1055, 1063, 43 L.Ed.2d 265 (1975).

#### **B. Remaining Claims**

Linville's ineffective assistance of counsel claim is patently frivolous. A reasonably competent attorney would not have challenged the charges on speedy trial grounds. Linville was a fugitive from justice for seven years. Moreover, he pleaded guilty to the charges thus waiving all nonjurisdictional challenges.

Linville's contention that he did not understand the consequences of his guilty plea is equally frivolous. On June 5, 1995, this Court addressed Linville's contention that he did not know about a fine or supervised release in the order denying Rule 35 motion. The Court stated as follows:

Linville asks the Court to reinstate the terms of the plea bargain because he kept the bargain although the government did not. The plea agreement states that the government would recommend to the court that Linville receive a sentence of ten to fifteen years on the continuing criminal enterprise count, and a maximum sentence of five years on the tax conspiracy count, with the sentences to run concurrently. The agreement, signed by Linville, also notes that the recommendation "is not binding upon Judge Brett and sentencing remains in the discretion of the trial court judge". Further, the Petition to Enter Plea of Guilty, also signed by Linville, states that "I know that the sentence I will receive is solely a matter within the control of the



Judge. ...I am prepared to accept any punishment permitted by law which the Court sees fit to impose."

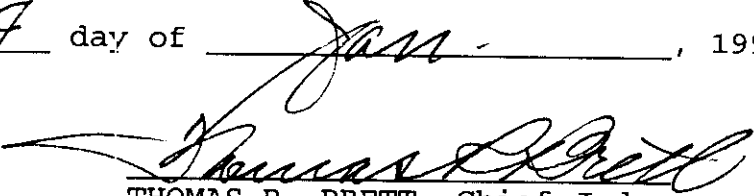
The government did not violate the terms of the plea agreement. At sentencing, the government made the recommendation outlined in the plea agreement. (Transcript of Sentencing, filed August 8, 1994, at p. 6) Linville's sentence of 12 years' imprisonment on the continuing criminal enterprise count was within the government's recommendation. Linville's sentence on the second count also was within the recommendation, although the Court was not required to follow the government's recommendation.

(Docket #214.) The Court will not revisit the above issue in this order.

## II. CONCLUSION

Accordingly, Linville's motion to vacate, set aside, or correct sentence (docket #214) is hereby DENIED. Linville's motions to appoint counsel (docket #216) and for summary judgment (docket #221) are DENIED and his motions to amend section 2255 motion (docket #218, #222, #223, #224, #225, and #226) are GRANTED.

SO ORDERED THIS 17 day of Jan, 1996.

  
THOMAS R. BRETT, Chief Judge  
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 17 1996

Richard M. Lawrence, Court Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHARLES EDWIN NOTTINGHAM,

Defendant.

No. 91-CR-80-B ✓  
(95-C-97-B)

ENTERED ON DOCKET

DATE JAN 18 1996

ORDER

This matter comes before the Court on Defendant Charles E. Nottingham's amended motion and supplement to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Also before the Court are Nottingham's motions for leave to allow discovery and to file second supplement. As set out below, Nottingham's motion should be denied.

In his first ground, Nottingham contends he was denied his Sixth Amendment right to counsel when co-defendant Monty Wood and his attorney, tape-recorded conversations between Wood and Nottingham after Nottingham's right to counsel had attached. Nottingham raised this issue at trial and on direct appeal. Both courts rejected Nottingham's argument and denied relief.

It is well established that "[a]bsent an intervening change in the law of a circuit, issues disposed of on direct appeal generally will not be considered on a collateral attack by a motion pursuant to § 2255." United States v. Prichard, 875 F.2d 789, 791 (10th Cir. 1989). Nottingham has not demonstrated any change in the law which would compel the court to re-examine this issue. Therefore, Nottingham is not entitled to relief.

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In grounds two, three, four, and five, Nottingham alleges (a) he was denied his Sixth Amendment right to confront witness Gerald Carroll, (b) the trial court committed reversible error when it informed the jury that Monty Wood had pled guilty and improperly instructed the jury concerning the testimony of Kenneth Thompson, and (c) the government improperly used the testimony of Linda Carroll in an attempt to admit improper evidence. In his Sixth ground, Nottingham alleges the Government failed to disclose certain favorable evidence--i.e., (1) the identity of latent prints found in the robbery get-away vehicle, (2) the results of polygraph examinations given to unknown individuals; (3) the disposition of a grand jury subpoena issued to Monty Wood; and (4) F.D. 302 reports allegedly made during an interview with Monty Wood which contained inconsistent statements.

The Government contends these grounds are procedurally barred as they could have been raised on direct appeal. It is well settled that "[s]ection 2255 motions are not available to test the legality of matters which should have been raised on direct appeal." United States v. Warner, 23 F.3d 287, 291 (10th Cir. 1994) (citation omitted). Consequently, Nottingham's failure to present an issue on direct criminal appeal bars him from raising that issue in his section 2255 motion, unless he can show cause excusing his procedural default and actual prejudice resulting from the errors of which he complains, or can show that a fundamental miscarriage of justice will occur if his claim is not addressed. Cook, 997 F.2d at 1320.

Nottingham has not shown cause and prejudice to excuse his procedural default. Even liberally construing Nottingham's allegation of ineffective assistance on page 16 of his amended motion, the Court concludes he would not be entitled to relief. To establish ineffective assistance of counsel a defendant must show that his counsel's performance was deficient and that the deficient performance prejudiced his defense. Strickland v. Washington, 466 U.S. 668, 687 (1984). Although the Strickland test was formulated in the context of evaluating a claim of ineffective assistance of trial counsel, the same test is used in assessing the ineffectiveness of appellate counsel. United States v. Cook, 45 F.3d 388, 392 (10th Cir. 1995). "When a defendant alleges his appellate counsel rendered ineffective assistance by failing to raise an issue on appeal," as in this case, the Court must examine "the merits of the omitted issue." Id. at 392-93. "If the omitted issue is without merit, counsel's failure to raise it 'does not constitute constitutionally ineffective assistance of counsel.'" Id. at 393 (quoted case omitted).

In the instant case none of Nottingham's claims have any merit. Nottingham was not denied the right to confront Gerald Carroll because Carroll did not provide any significant evidence about Nottingham. The fact that the trial court did not give a second cautionary instruction about Wood's guilty plea prior to commencement of deliberation is immaterial since the court had cautioned the jury after voir dire that Wood's guilty plea could not be considered as evidence against any of the other defendants.

Moreover, even if the Government's impeachment of Carroll was a subterfuge to admit otherwise inadmissible evidence, the Court finds Nottingham was not prejudiced by the limited evidence presented by Carroll. Indeed, the record shows that there was more than sufficient evidence to convict Nottingham without Carroll's testimony. Lastly, Nottingham has not established that the withheld evidence is material under Brady v. Maryland, 373 U.S. 83 (1963). "[E]vidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.' A 'reasonable probability' is a 'probability sufficient to undermine confidence in the outcome.'" Banks v. Reynolds, 54 F.3d 1508, 1518 (10th Cir. 1995).<sup>1</sup>

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<sup>1</sup> In Banks, the Tenth Circuit Court of Appeals stated as follows:

In evaluating the materiality of withheld evidence, we do not consider each piece of withheld evidence in isolation. Rather, we review the cumulative impact of the withheld evidence; its utility to the defense as well as its potentially damaging impact on the prosecution's case. Furthermore, recognizing that, in the usual case, not "every item of the State's case" will be undercut if the Brady material is disclosed, we evaluate the materiality of withheld evidence in light of the entire record in order to determine if "the omitted evidence creates a reasonable doubt that did not otherwise exist." What might be considered insignificant evidence in a strong case might suffice to disturb an already questionable verdict."

Our materiality review does not include speculation. "The mere possibility that evidence is exculpatory does not satisfy the constitutional materiality standard." However, we do recognize that evidence in the hands of [a] competent defense attorney may be used "to uncover other leads and defense theories." Thus, we may draw reasonable inferences as to what those other lines of defense may have been.

In grounds seven and eight, Nottingham raises several instances of ineffective assistance of trial counsel. First, he alleges that because no one was "tied, bound or locked up" during the commission of the robbery his sentence should not have been enhanced under U.S.S.G. § 2B3.1(b)(4)(B). The Court does not agree. As the government states: "'the examples set forth in the guidelines are by way of illustration and not limitation, and not exclusion.'" United States v. Roberts, 898 F.2d 1465, 1470 (10th Cir. 1990) (citing Rec., supp. vol. I, at 16). In this matter, since persons were held at gunpoint (see, e.g., Trial Transcript, v.I, p. 106), the Court finds that there was sufficient evidence to warrant a two-point enhancement under the Guidelines. Thus, any objection by Nottingham's trial attorney would have been invalid.

Second, Nottingham alleges the three-point enhancement under U.S.S.G. § 3B1.1(b) was improper as he did not act as a supervisor and had only a minor role in the robbery. The evidence shows otherwise. By recruiting participants, Nottingham was actively involved in the management/supervision of the robbery. Therefore, any objection by Nottingham's attorney would have been meritless and Nottingham was not eligible for a reduction.

Third, Nottingham contends he should not have been assessed a four-point enhancement under U.S.S.G. § 2B3.1(b)(2)(B) for use of a firearm. The government replies that the decision of United States v. Goddard, 929 F.2d 546, 549 (10th Cir. 1991), precludes

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Id. at 1518-19.

any relief. In Goddard, defendant's "sentence [was not] increased because of his own intentional possession of the gun, but because of his knowing and voluntary complicity with the possessor of the gun where he knew the gun was present and it was connected to the conspiracy." Id.

In the case at hand, it is undisputed that guns were used in the bank robbery. (Trial tr. v. I at 106.) Further, Nottingham's knowledge of the guns is evidenced by the fact that he was carrying them after the robbery had been completed. (Trial tr. v. IV at 725-26.) Thus, the four-point enhancement under Goddard was justified and any objection by Nottingham's attorney would not have been successful.

Fourth, Nottingham contends his attorney failed to request a severance pursuant to Fed. R. Crim. P. 14 which requires separate trials to prevent prejudice to the defendant. In this matter, Nottingham claims he was prejudiced by the introduction of the tape-recorded conversations involving his co-defendants following arrest. As noted above, Nottingham was not prejudiced by the introduction of these tapes. Therefore, separate trials were not warranted and any such request by Nottingham's attorney would have been denied.

In his ninth ground, Nottingham contends he was denied effective assistance of counsel because his attorney previously represented a government witness, Kenneth Thompson, and the trial court failed to conduct a hearing pursuant to Fed. R. Crim. P. 44(c). Rule 44(c) reads as follows:


Whenever two or more defendants have been jointly charged pursuant to Rule 8(b) or have been joined for trial pursuant to Rule 13, and are represented by the same retained or assigned counsel or by retained or assigned counsel who are associated in the practice of law, the court shall promptly inquire with respect to such joint representation. . . .

In the case at hand, Thompson was not a co-defendant who was jointly represented by Nottingham attorney. Therefore, Rule 44(c) is inapplicable. See Fryar v. United States, 404 F.2d 1071 (10th Cir. 1968), cert. denied, 395 U.S. 964 (1969).<sup>2</sup>

Lastly, the Court denies Nottingham's second motion for leave to file 2nd supplement to his amended motion pursuant to section 2255. This Court has previously allowed Nottingham to file an amended motion and to supplement the same to set forth all of the grounds of errors which occurred at his trial. Thus, Nottingham has been provided a full and complete opportunity to develop and submit for this Court's consideration all grounds of error.

Accordingly, Nottingham's amended motion to vacate, set aside, or correct sentence, including supplement, is DENIED (docket #138 and #139). Nottingham's motions for leave to conduct discovery and to file second supplement (docket #135 and #144) are DENIED.

SO ORDERED THIS 17<sup>th</sup> day of Jan., 1996.

  
THOMAS R. BRETT, Chief Judge  
UNITED STATES DISTRICT COURT

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<sup>2</sup> The Court also notes that Defendant has failed to show actual prejudice based upon his attorney's previous representation of Thompson.



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

**FILED**

JAN 17 1996

Richard M. Lawrence, Court Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARY J. MEYER,

Defendant.

No. 91-CR-120-B

ENTERED ON DOCKET

DATE JAN 18 1996

ORDER

This matter comes before the Court on Mary J. Meyer's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Meyer alleges she has been punished on three different occasions for the same offense in violation of the Double Jeopardy Clause. She states the Government forfeited her automobile and residence and sentenced her to five years of probation.

In October 1991, Meyer was charged with twenty counts of violations of federal laws prohibiting the interstate transmission of wagering information (18 U.S.C. § 1084) as well as aiding and abetting in those violations and three counts of money laundering (18 U.S.C. § 1956). On December 20, 1991, after a two-day jury trial, the jury found Petitioner guilty as to all twenty-three counts. In April 1992, Petitioner was sentenced to 24 months in the custody of the U.S. Bureau of Prisons, two years of supervised release, and a \$10,000 fine. On July 16, 1992, the government moved for default against Meyer's automobile, a 1990 White Ford Taurus, because no person had filed a claim in the civil forfeiture action. On July 17, 1992, The Court entered a judgment of forfeiture.

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In February 1993, Meyer entered in an agreement with the Government whereby she would testify against Jack Blair and his confederates, dismiss her pending appeal, and consent to the forfeiture of her residence (which had been used to transact illegal bookmaking operations) all in return for a reduction in her sentence. On February 24, 1993, a judgment of forfeiture was entered. On March 19, 1993, this Court reduced Meyer's sentence to 5 years of probation and a \$10,000 fine.

#### ANALYSIS

There is a split of authority as to whether civil forfeitures constitute punishment for purposes of double jeopardy analysis. Meyer urges the Court to follow the Ninth Circuit, which holds that separate civil forfeiture proceedings are "punishment" that triggers double jeopardy. United States v. \$405,089.23, 33 F.3d 1210 (9th Cir. 1994). The bulk of authority, however, holds that civil forfeitures do not trigger double jeopardy. See United States v. United States Currency, 18 F.3d 73 (2d Cir. 1994); United States v. Tilley, 18 F.3d 295 (5th Cir. 1994); United States v. Torres, 28 F.3d 1463 (7th Cir. 1994); United States v. One Single Family Residence, 13 F.3d 1493 (11th Cir. 1994); Securities and Exchange Commission v. Bilzerian, 29 F.3d 689 (D.C. Cir. 1994).

These courts reason that

forfeiture of proceeds of illegal drug sales serves the wholly remedial purposes of reimbursing the government for the costs of detection, investigation, and prosecution of drug traffickers and reimbursing society for the costs of combatting the allure of illegal drugs, caring for the victims of the criminal trade when

preventative efforts prove unsuccessful, lost productivity, etc.

Tilley, 18 F.3d at 299. These courts hold that forfeiture is a remedial procedure, not a punitive one; therefore, there are no successive punishments that would trigger double jeopardy. The Court believes these circuits have the better view.<sup>1</sup>

In any event, Meyer's consent to the forfeiture of her residence in exchange for a lower sentence effectively waived any objection she might have based upon the Double Jeopardy Clause's prohibition against multiple punishments. See United States v. Cordoba, \_\_\_ F.3d \_\_\_, 1995 WL 733508 (10th Cir. Dec. 12, 1995).

"[T]he Double Jeopardy Clause . . . does not relieve a defendant from the consequences of his voluntary choice." United States v. Scott, 437 U.S. 82, 99, reh'g denied, 439 U.S. 883 (1978). Furthermore, double jeopardy rights may be waived by agreement, even where double jeopardy was not specifically referred to by name in the plea agreement when the substance of the agreement is to allow for double prosecution. See Ricketts v. Adamson, 483 U.S. 1, 10 (1987); see also United States v. Mezzanato, 115 S.Ct. 797, 801 (1995) ("A criminal defendant may knowingly and voluntarily waive many of the most fundamental protections afforded by the Constitution").

Id.

Further, Meyers did not contest the forfeiture of her vehicle in the civil forfeiture proceeding. The Seventh Circuit in Torres found that jeopardy does not attach in such a situation:

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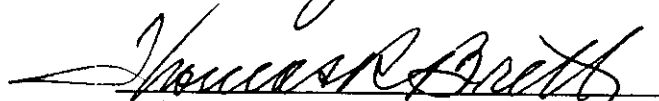
<sup>1</sup>The Court also notes that the burden of proof applied in civil forfeiture cases differs from that of a criminal proceeding. The government is required to show only probable cause to believe that the property is subject to forfeiture. In a criminal proceeding, however, the government must prove guilt beyond a reasonable doubt. United States v. Michelle's Lounge, 39 F.3d 684 (7th Cir. 1994).

[T]here was no trial; the [money] was forfeited without opposition, and jeopardy did not attach. You can't have double jeopardy without a former jeopardy... As a non-party, Torres was not at risk in the forfeiture proceeding, and 'without risk of a determination of guilt, jeopardy does not attach, and neither an appeal nor further prosecution constitutes double jeopardy.'

Torres, 28 F.3d at 1465, citing Serfass v. United States, 420 U.S. 377, 389, 95 S.Ct. 1055, 1063, 43 L.Ed.2d 265 (1975).

Accordingly, Meyer's motion to vacate, set aside, or correct sentence is hereby DENIED.

SO ORDERED THIS 17<sup>th</sup> day of Jan, 1996.

  
THOMAS R. BRETT, Chief Judge  
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 16 1996

Richard M. Lawrence, Court Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHESTER VERNON ZEIGLER,

Defendant.

No. 92-CR-15-B  
(95-C-83-B)

ENTERED ON DOCKET

DATE JAN 17 1996

ORDER

This matter comes before the Court on Defendant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. For the reasons stated below, Defendant's motion should be denied.

Following a jury trial on March 23 and 24, 1992, Defendant was convicted of six counts of carrying a firearm during a crime of violence--six robberies affecting interstate commerce--in violation of the Hobbs Act, 18 U.S.C. §§ 1951 and 924(c).<sup>1</sup> On April 22, 1992, this Court sentenced Defendant to 400 months in the Bureau of Prisons. Defendant perfected a timely appeal, and the government cross-appealed as to the sentence imposed. On March 7, 1994, the convictions were affirmed, but defendant was remanded to the district court for resentencing in accordance with United States v. Deal, 113 S.Ct. 1993 (1993). On remand, this Court imposed a 1,297-month sentence.

In this section 2255 motion, Defendant contends his section

<sup>1</sup> Defendant was also convicted of two counts of possessing a firearm with an obliterated serial number. These counts are not at issue in this section 2255 motion.

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924(c) convictions are invalid because he was never charged or convicted of the underlying robberies. He also contends counsel was ineffective in the constitutional sense for failing to raise the above objection at trial and on direct appeal.

Because Defendant's jurisdictional claim could have been raised on direct appeal, the Court raises sua sponte the doctrine of procedural default. United States v. Cook, 997 F.2d 1312, 1320 (10th Cir. 1993) (federal court can raise procedural bar sua sponte). It is well settled that "[s]ection 2255 motions are not available to test the legality of matters which should have been raised on direct appeal." United States v. Warner, 23 F.3d 287, 291 (10th Cir. 1994) (citation omitted). Consequently, a defendant's failure to present an issue on direct criminal appeal bars him from raising that issue in his section 2255 motion, unless he can show cause excusing his procedural default and actual prejudice resulting from the errors of which he complains, or can show that a fundamental miscarriage of justice will occur if his claim is not addressed. Cook, 997 F.2d at 1320.

Ineffective assistance of counsel for failing to raise the jurisdictional claim at trial and on direct appeal may present sufficient cause to excuse Defendant's procedural bar in this case. To establish ineffective assistance of counsel Defendant must show that his counsel's performance was deficient and that the deficient performance prejudiced his defense. Strickland v. Washington, 466 U.S. 668, 687 (1984); Osborn v. Shillinger, 997 F.2d 1324, 1328 (10th Cir. 1993) (same). Defendant can establish the first prong

by showing that counsel performed below the level expected from a reasonably competent attorney in criminal cases. Strickland, 466 U.S. at 687-88. There is a "strong presumption [however,] that counsel's conduct falls within the wide range of reasonable professional assistance." Id. at 695.

Defendant's jurisdictional claim lacks any merit. It is now well established that section 924(c) creates a substantive offense separate from the underlying crime.<sup>2</sup> In United States v. Hill, 971 F.2d 1461, 1467 (10th Cir. 1992) (en banc), the Tenth Circuit Court of Appeals held that the existence of an underlying drug trafficking offense, not a drug trafficking charge or conviction, is required to support a conviction under section 924(c). See also United States v. Kelsey, 15 F.3d 152, 153 (10th Cir. 1994). "The language of § 924(c)(1) provides only that the underlying offense be one for which [the defendant] may be prosecuted." Id. (quoting Hill, 971 F.2d at 1467).<sup>3</sup>

Having concluded that Defendant's claim was not meritorious, Defense counsel's failure to raise that issue at trial or on appeal

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<sup>2</sup> Section 924(c)(1) provides in part as follows:


Whoever, during and in relation to any crime of violence or drug trafficking crime . . . , for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for five years. . . .

<sup>3</sup> On direct appeal, the Tenth Circuit found the evidence at trial sufficient for a jury to find the necessary de minimis connection between the robberies and interstate commerce to support a conviction under section 1951(a) of the Hobbs Act.

does not constitute constitutionally ineffective assistance of counsel. Accordingly, Defendant cannot show cause and prejudice to excuse his procedural default.

The motion to vacate, set aside, or correct sentence (docket # 40) is DENIED.

SO ORDERED THIS 17 day of Jan., 1996.

  
THOMAS R. BRETT, Chief Judge  
UNITED STATES DISTRICT COURT



FILED

JAN 17 1996

Richard M. Lawrence, Court Clerk  
U.S. DISTRICT COURTUNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 94-CR-125-001-E

ENTERED ON DOCKET

DATE 1/17/96DONALD CHARLES DECKER  
Defendant.JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)

The defendant, DONALD CHARLES DECKER, was represented by Steve Greubel.

On motion of the United States the court has dismissed count(s) 1-4, 6-9, 11-13, 15-24 of the Superseding Indictment.


The defendant pleaded guilty on November 29, 1995, to count(s) 5, 10 &amp; 14 of the Superseding Indictment. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18:1341 and 2	Wire Fraud and Causing a Criminal Act	3/27/92	5, 10, & 14

As pronounced on January 11, 1996, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 150, for count(s) 5, 10 &amp; 14 of the Superseding Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 16<sup>th</sup> day of January, 1996.
  
 The Honorable James O. Ellison  
 United States District Judge

 Defendant's SSN: 290-30-6306  
 Defendant's Date of Birth: 04/16/35  
 Defendant's residence and mailing address: 1911 S. Cheyenne, Tulsa, OK 74119

 United States District Court )  
 Northern District of Oklahoma ) SS  
 I hereby certify that the foregoing  
 is a true copy of the original on file  
 in this Court.

 Richard M. Lawrence, Clerk  
 By Ben M. Cullough  
 Deputy

Defendant: DONALD CHARLES DECKER  
Case Number: 94-CR-125-001-E

Judgment--Page 2 of 5

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 28 months, all counts to run concurrently.

The Court makes the following recommendations to the Bureau of Prisons: (1) That the defendant receive psychological evaluation, as well as any needed mental health treatment while confined with the Bureau of Prisons. (2) That the Bureau of Prisons designate a facility in Colorado for the defendant to serve his term, provided such a facility meets all classification requirements.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 noon on February 8, 1996.

### RETURN

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: DONALD CHARLES DECKER  
Case Number: 94-CR-125-001-E

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall participate in a program of mental health treatment (to include inpatient), as directed by the Probation Officer, until such time as the defendant is released from the program by the Probation Officer.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
6. The defendant shall not work in any business, profession or form of self employment engaged in the offer, sale purchase, investment or trade of money, any security or any negotiable instrument, or the acquisition of any loan or appropriation or liquidation of any asset, to include the solicitation for receipt of any monies, security or negotiable instrument from any source for any person, or any other business, partnership or corporation unless permitted to do so by the U. S. Probation Officer.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: DONALD CHARLES DECKER  
Case Number: 94-CR-125-001-E

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$12,000 on Count 5.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
Raymond Long Route 6, Box 6043 Chattsworth, GA 30705	\$12,000

Payments of restitution are to be made to the United States Attorney for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: DONALD CHARLES DECKER  
Case Number: 94-CR-125-001-E

BJS

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report, EXCEPT, restitution, court used figure below.

**Guideline Range Determined by the Court:**

Total Offense Level:	16
Criminal History Category:	II
Imprisonment Range:	24 months to 30 months - cts. 5, 10 & 14
Supervised Release Range:	2 to 3 years - cts. 5, 10 & 14
Fine Range:	\$ 6,000 to \$ 60,000 - cts. 5, 10 & 14
Restitution:	\$ 129,716.22

The fine is waived or is below the guideline range because of the defendant's inability to pay.

Full restitution is not ordered for the following reason(s): Defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

**FILED**

**UNITED STATES DISTRICT COURT**  
**Northern District of Oklahoma**

JAN 17 1996

Richard M. Lawrence, Court Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 95-CR-108-001-B

SHAWNA L. MARTIN  
 Defendant.

ENTERED ON DOCKET

DATE 1-17-96

**JUDGMENT IN A CRIMINAL CASE**  
**(For Offenses Committed On or After November 1, 1987)**

The defendant, SHAWNA L. MARTIN, was represented by Regina Stephenson.

The defendant pleaded guilty on October 10, 1995, to count(s) 1 of the Information. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

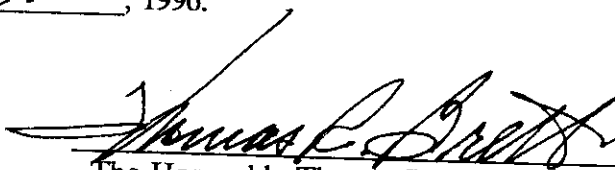
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18:2113(a)	Entering a Bank to Commit a Felony	07/14/94	1

As pronounced on January 12, 1996, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50, for count(s) 1 of the Information, which shall be due immediately.

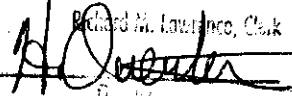
It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 17<sup>th</sup> day of Jan., 1996.

  
 The Honorable Thomas R. Brett, Chief  
 United States District Judge

Defendant's SSN: 440-86-1447  
 Defendant's Date of Birth: 01/27/70  
 Defendant's residence and mailing address: P.O. Box 675, Cleveland, OK 74020

United States District Court  
 Northern District of Oklahoma  
 I hereby certify that the foregoing  
 is a true copy of the original on file  
 in this Court.

Richard M. Lawrence, Clerk  
 By 

Defendant: SHAWNA L. MARTIN  
Case Number: 95-CR-108-001-B

Judgment--Page 2 of 5

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 5 months.

The Court makes the following recommendations to the Bureau of Prisons: The court recommends the defendant be allowed to serve her custody term at the Freedom Ranch in Tulsa, Oklahoma.

The defendant shall surrender to the United States marshal for this district at 11:00 a.m. on February 12, 1996.

### RETURN

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: SHAWNA L. MARTIN  
Case Number: 95-CR-108-001-B

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of 5 months, to commence within 72 hours of release of custody. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office.
5. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### **STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.



Defendant: SHAWNA L. MARTIN  
Case Number: 95-CR-108-001-B

Judgment--Page 4 of 5

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$3,981.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
Bank of Oklahoma Attn. Lowell Faulkenberry Vice Pres., Internal Auditing One Williams Center Tulsa, OK 74103	\$3,981

Payments of restitution are to be made to the United States Attorney for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: SHAWNA L. MARTIN  
Case Number: 95-CR-108-001-B

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	10
Criminal History Category:	III
Imprisonment Range:	10 months to 16 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 2,000 to \$ 20,000
Restitution:	\$ 3,981

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.



UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 95-CR-078-001-K

JAMES COLLINS  
Defendant.

ENTERED ON DOCKET

DATE 1-17-96

**FILED**

JAN 17 1996

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)  
Richard M. Lawrence, Court Clerk  
U.S. DISTRICT COURT

The defendant, JAMES COLLINS, was represented by Jeffrey D. Fischer.

The defendant pleaded guilty to count(s) 1 of the Indictment on September 19, 1995. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):


<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
21 USC 841(a)(1), (b)(1)(C) & 851; & 18 USC 2	Distribution of Cocaine and Aiding & Abetting	06/16/95	1

As pronounced on January 8, 1996, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 16 day of January, 1996.

  
The Honorable Terry C. Kern  
United States District Judge

Defendant's SSN: 443-30-8805

Defendant's Date of Birth: 10/06/31

Defendant's mailing address: 604 South Avenue G, Coweta, OK 74429

Defendant's residence address: C/O U.S. Bureau of Prisons

Defendant: JAMES COLLINS  
Case Number: 95-CR-078-001-K

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 42 months.

The defendant is remanded to the custody of the United States Marshal.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: JAMES COLLINS  
Case Number: 95-CR-078-001-K

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 6 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.

### **STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: JAMES COLLINS  
Case Number: 95-CR-078-001-K

**FINE**

The defendant shall pay a fine of \$ 10,000.00. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. Sec 18 U.S.C. § 3614.

Defendant: JAMES COLLINS  
Case Number: 95-CR-078-001-K

### STATEMENT OF REASONS

The Court adopts the factual findings and guideline application in the presentence report, except: The court finds that the defendant is not a career offender pursuant to USSG §4B1.1, as recommended in the presentence report which calculated a total offense level 29 and a criminal history category of VI, yielding an imprisonment range of 151 to 188 months. The Court departs from the career offender category because it significantly over-represents the seriousness of defendant's criminal history and the likelihood that the defendant will commit further crimes. USSG §§4A1.3, 5K2.0. This finding is based on the following factual findings: the defendant is elderly and infirm, id. §5H1.1, and one of the predicate offenses for the career offender categorization occurred close to ten years prior to the instant offense, id. §4A1.3.

The Court uses as a reference the guideline range for defendant's offense level and criminal history without the career offender enhancement, see id. §4A1.3 (policy statement).

#### Guideline Range Determined by the Court:

Total Offense Level:	17
Criminal History Category:	IV
Imprisonment Range:	37 months to 46 months
Supervised Release Range:	6 years
Fine Range:	\$ 5,000 to \$ 2,000,000
Restitution:	\$ N/A

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 10 1996

UNITED STATES OF AMERICA,

Plaintiff,

DONREZ OKA ADAMS,

Defendant.

No. 95-CR-111-C

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE JAN 11 1996

ORDER

NOW ON this 9 day of January, 1996, this cause comes on to be heard on the motion of the plaintiff, United States of America, to dismiss the above-captioned indictment and superseding indictment, with prejudice. From said motion, and other matters and things, the Court finds that said motion ought to be, and is hereby, GRANTED.

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED that the indictment and superseding indictment herein are dismissed, with prejudice.

IT IS SO ORDERED.

(Signed) H. Dale Cook

H. DALE COOK  
United States District Judge



**UNITED STATES DISTRICT COURT**  
**Northern District of Oklahoma**

**FILED**

JAN 10 1996 110

UNITED STATES OF AMERICA

Richard M. Lawrence, Court Clerk  
U.S. DISTRICT COURT

v.

Case Number 95-CR-124-001-B

**RHONDA KAYE MYERS**  
 Defendant.

ENTERED ON DOCKET

DATE 1-10-96

**JUDGMENT IN A CRIMINAL CASE**  
**(For Offenses Committed On or After November 1, 1987)**

The defendant, RHONDA KAYE MYERS, was represented by Kathryn Herwig.

The defendant pleaded guilty to count(s) 1 of the Information on October 6, 1995. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):


<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 656	Misapplication of Bank Funds by Bank Employee	05/15/95	1

As pronounced on January 5, 1996, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 10<sup>th</sup> day of January, 1996.

  
 The Honorable Thomas R. Brett  
 United States District Judge

Defendant's SSN: 443-90-3410

Defendant's Date of Birth: 05/26/75

Defendant's residence and mailing address: Rt. 2, Box 110-G, Inola, OK

United States District Court }  
 Northern District of Oklahoma } SS

I hereby certify that the foregoing  
 is a true copy of the original on file  
 in this Court.

By   
 Richard M. Lawrence, Clerk  
 Deputy

Defendant: RHONDA KAYE MYERS  
Case Number: 95-CR-124-001-B

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of zero months.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: RHONDA KAYE MYERS  
Case Number: 95-CR-124-001-B

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of 2 months, to commence within 72 hours of sentencing date. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The entire cost of this program shall be paid by the defendant.
5. The defendant shall perform 200 hours of community service, as directed by the probation office within the first year of supervision.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: RHONDA KAYE MYERS  
Case Number: 95-CR-124-001-B

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 1,000.00. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid within the first 12 months of the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: RHONDA KAYE MYERS

Case Number: 95-CR-124-001-B

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	7
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months
Supervised Release Range:	3 to 5 years
Fine Range:	\$ 500 to \$1,000,000
Restitution:	\$ N/A (Already paid in full)

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

*Handwritten signature*

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

JAN 9 1996

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

MICHAEL PAUL DALE SINCLAIR, )

Defendant. )

Case No. 95-CR-60 (H)

ENTERED ON DOCKET

DATE JAN - 9 1996

O R D E R

This matter comes before the Court on Defendant Michael Paul Dale Sinclair's Motion for New Trial and for Judgment of Acquittal. On September 5, 1995, Defendant Sinclair was convicted of one count of conspiracy to commit perjury under 18 U.S.C. § 371 and one count of perjury under 18 U.S.C. § 1623. In his motion, Sinclair argues that he is entitled to a new trial based upon newly discovered evidence or that, alternatively, he is entitled to a judgment of acquittal because the evidence at trial was insufficient to sustain his conviction.

I.

Both counts of Sinclair's indictment were based upon testimony given by Sinclair in the trial of United States v. Peter J. McMahon and Kandy Kay Thomas, No. 94-CR-176-Bu, on March 22, 1995. Defendants McMahon and Thomas were charged with possessing a firearm after having previously been convicted of a felony, in violation of 18 U.S.C. § 922(g), and with possessing a firearm in connection with a drug felony, in violation of 18 U.S.C. § 924(c).

126

Glenn  
p. 10

At the trial of McMahon and Thomas, Sinclair testified pursuant to a subpoena issued on behalf of Defendants as follows:

Q. Okay. Now, sir, in the month of September, 1994, did you have occasion to be at their [McMahon and Thomas] residence in an apartment here in Tulsa?

A. I did.

. . . .

Q. Okay. Now, do you happen to recall the date you were at the residence?

A. I do recall it, simply from sometime later, that this was the day they were arrested. It was the 9th of September.

. . . .

Q. Do you recall what time of day it was, sir, that you were there?

A. It was early, say around 9:30, maybe 10:00.

Q. All right sir. Do you recall any other persons coming to the apartment while you were there that day?

A. Well, yeah. Kandy's boy showed up and I guess their dad. I am not acquainted with their dad. . .

. . . .

Q. Let me ask you another question. Kandy's boy you know -- do you know his name?

A. Dallas.

Q. Okay. And was there another man there?

A. Roy.

Q. The other man's name is Roy?

A. I believe so, yes.

Q. Okay. And what was this man doing?

A. He was bringing in some boxes, items that belonged to Dallas, I guess, from --

. . . .

Q. Mr. Sinclair, without telling us what anyone said, just tell the Court what you saw this person --

A. He was bringing in some boxes and other items and putting them in the back bedroom.

Q. All right. Now among the items that were brought into the residence, did you see a fire arm?

A. I did.

Q. And did you take a look at it?

A. Not in my personal -- in my hands, but, yes, I did observe it up close.

. . . .

Q. Now this fire arm that -- who brought the fire arm into the apartment?

A. The gentleman.

Q. And did you see what he did with it?

A. Carried it to the back right-hand bedroom as you would look into the apartment and what he did with it at that time, I don't know. (emphasis in original).

The Government alleges that Sinclair knew that the underscored testimony was false. In the indictment, the Government further alleges that Sinclair's statement was material because the jury in the McMahon/Thomas trial was charged with determining whether McMahon and Thomas had knowingly possessed the shotgun prior to September 9, 1994. The other count alleged that Sinclair conspired with McMahon, Thomas, and other unindicted coconspirators to commit perjury at the trial.

At Sinclair's trial, the evidence presented by the Government on these counts included the testimony of Terry Young, Tulsa Police detective Lowell Due, Peter McMahon, Kandy Thomas, Dallas Woods,



and Carlos Sandoval. Young testified that he, and not the father of Dallas Woods, delivered the shotgun in question and a box of shells to McMahon and Thomas in an apartment they had previously occupied on or about the first of July to repay McMahon for drugs.

Due testified that, pursuant to a search warrant, he conducted a search of the McMahon/Thomas apartment on September 9, 1994 and found drugs, money, a shotgun, and a box of shells in the apartment. The shotgun and shells were located in a closet in the bedroom shared by McMahon and Thomas.

McMahon acknowledged that he had known Sinclair for about one and a half years, that he had conspired with others to commit perjury in his trial, that he had spoken to Sinclair prior to trial about his testimony, that he had previously testified under oath that he had asked Sinclair to lie on his behalf, that he had testified under oath that he had asked Sinclair to testify falsely regarding the date that the shotgun appeared in his apartment, that, to the best of his knowledge, Sinclair had met his end of the agreement, that he (McMahon) previously testified that he had told Sinclair what to say, and that he (McMahon) wrote a letter to Ron Woods concerning the testimony of Dallas and Waylon Woods. On cross-examination, McMahon stated that, to the best of his knowledge, Kandy Thomas was alone in the apartment on the morning of September 9, 1994 and that he had spoken to Sinclair in November 1994, at which time Sinclair informed him that he (Sinclair) was in the apartment on the morning of September 9, 1994.

Thomas corroborated Terry Young's testimony. She testified that Young had delivered the shotgun to her and McMahon in the Summer of 1995 while they were living at the Chaparral Apartments. The shotgun was moved with them when they moved to the Autumn Woods Apartments, which is where the search took place. The shotgun was kept in the master bedroom of that apartment. She further testified that, on the morning in question, Dallas Woods had gone to school, and no one had delivered anything to her apartment.

Thomas testified further to the existence of a conspiracy between she and McMahon to escape conviction. She testified that, through conversations with McMahon, she became aware that McMahon had enlisted Sinclair's participation in the conspiracy. Sinclair was to testify falsely that he was present when Ron Woods brought the shotgun to the apartment on September 9, 1994. Additionally, she testified that she contacted Sinclair before trial at McMahon's request. Sinclair had stated to her that he was "okay" with what he and Peter McMahon had discussed.

Additionally, Thomas testified that she had procured the false testimony of her sons, Dallas and Waylon Woods. She also testified that she had arisen at 6:00 a.m. on September 9, 1994 in order to "have her first fix"; that several drug customers had come by the apartment before noon; and that Dallas Woods came home at 3:00 p.m.

Dallas Woods' testimony was consistent with that of Thomas. He testified that the shotgun did not belong to him or his brother; that he had seen the shotgun at both the Autumn Woods apartment and the Chaparral apartment and that the shotgun had been moved from

the Chaparral to the Autumn Woods apartment; that the shotgun belonged to McMahon, and not to his (Dallas') father; that his father did not come to the apartment on September 9; that he had gone to school on September 9; that Thomas and McMahon kept the shotgun in their bedroom closet; and that Thomas and McMahon procured his false testimony in their trial.

Sinclair presented no witnesses on his own behalf.

During closing argument, the Government specifically referred to the testimony involving Dallas Woods' school attendance on September 9, 1994, stating:

the testimony is undisputed that Dallas Woods was at school on the morning of September 9. That testimony is unrefuted. In this very document, in this transcript [Mr. Sinclair] said under oath, in addition to the other things we say he said which were a lie, he said he had a conversation with Dallas and his father, somebody he took to be his father. He couldn't have done that. It's impossible because Dallas was at school. He trapped himself with his own mouth.

During the jury deliberations, the Court received a note from the jury which requested, "Can we find out for sure if Dallas Woods was in school?" (emphasis in original). In response, the jury was instructed to decide the case based upon the evidence that had already been provided to it. The jury convicted Mr. Sinclair on both counts.

Following the trial, Defendant reviewed the school attendance records for Dallas Woods from Independent School District No. 1 of Tulsa County, Oklahoma. These records reflect that Dallas Woods was marked absent from school on September 9, 1994.

## II.

Rule 33 of the Federal Rules of Criminal Procedure permits "[t]he court on motion of a defendant [to] grant a new trial to that defendant if required in the interest of justice." Such a motion "is not regarded with favor and should be granted only with great caution, being addressed to the sound discretion of the trial court." United States v. Stevens, 978 F.2d 565, 570 (10th Cir. 1992) (quoting United States v. Sutton, 767 F.2d 726, 728 (10th Cir. 1985)).

Newly discovered evidence is one basis upon which a defendant may seek a new trial "in the interest of justice." To prevail on a Rule 33 motion based upon newly discovered evidence, the defendant must show that:

(1) the evidence was discovered after trial; (2) the failure to learn of the evidence was not caused by his own lack of diligence; (3) the new evidence is not merely impeaching; (4) the new evidence is material to the principal issues involved; and (5) the new evidence is of such a nature that in a new trial it would probably produce an acquittal.

Stevens, 978 F.2d at 570; Sutton, 767 F.2d at 728.

Rather than the test outlined above, Defendant urges the Court to adopt a more lenient standard, the "possibility test", which was first outlined in Larrison v. United States, 24 F.2d 82, 87-88 (7th Cir. 1928) and is applied most frequently when the newly discovered evidence relates to perjury committed by a material witness, see United States v. Jackson, 579 F.2d 553, 556 (10th Cir.), cert. denied sub nom. Allen v. United States, 439 U.S. 981 (1978). To date, the Tenth Circuit has not adopted the Larrison test. See, e.g., Jackson, 579 F.2d at 556-57; United States v. Briola, 465

F.2d 1018, 1022 (10th Cir. 1972), cert. denied, 409 U.S. 1108 (1973). Therefore, in the instant case, this Court will apply the standard set out by the Tenth Circuit in Stevens and its progeny.

Under this standard, for Defendant to prevail on his motion, the new evidence must be material to the principal issues involved in the case, Stevens, 978 F.2d at 570. Under the facts presented here, this requirement is not satisfied.

The testimony at issue is Dallas Woods' statement that he attended school on September 9. The attendance records which Defendant obtained after the conclusion of the trial reflect that Dallas was marked absent from school on that day. However, Dallas' whereabouts on September 9 were not material to Sinclair's case.

Sinclair was indicted for perjury and for conspiracy to commit perjury at the McMahon/Thomas trial. To prevail, the Government had the burden of proving beyond a reasonable doubt (1) the existence of a conspiracy to commit perjury between Sinclair and others; (2) that Sinclair lied when he testified that he observed someone carrying the firearm in question into the McMahon/Thomas apartment on September 9; (3) that Sinclair's lie was material to the McMahon/Thomas trial; and (4) that he lied knowingly and willfully.

At the Sinclair trial, the Government presented the testimony of Terry Young, who stated that he was the person who had delivered the gun in question to McMahon and Thomas and that he had done so well before Sinclair claimed to have witnessed the weapon's arrival at the apartment occupied by Thomas and McMahon. Further, Ms.

Thomas testified that the events described by Sinclair on September 9, namely, the delivery of the firearm into the apartment, did not occur. This evidence was central to the issue of whether Sinclair had committed perjury and formed the factual basis for Sinclair's conviction.

In contrast, the part of Dallas Woods' testimony to the effect that he had "gone to school" on September 9 had no bearing on the material issues in the case. Cf. Stevens, 978 F.2d at 570 (whether defendant's trial lawyer had been disbarred was not material to principal issue in case--the aiding and abetting a fellow inmate to escape; trial court's denial of new trial affirmed); Sutton, 767 F.2d at 729 (newly discovered evidence immaterial to issues in case; trial court did not abuse its discretion in denying motion for new trial). The primary purpose of Dallas Woods' testimony was to establish that the firearm had been in the possession of McMahon and Thomas for some time prior to September 9 and that McMahon had undertaken to cause Dallas to commit perjury by claiming ownership of the firearm as a gift from his father. Whether Dallas was at school on September 9 or somewhere else did not affect Sinclair's perjured testimony, that he observed a man bring the firearm into the Thomas/McMahon apartment.

Even if the school attendance records had been introduced as evidence at trial, the jury would still have been confronted with the unrefuted evidence of Young and Thomas demonstrating that Young brought the firearm to the apartment at a much earlier date and that Sinclair had not been present in the apartment on the morning

of September 9. In light of this evidence, Dallas' testimony as to his whereabouts on September 9 was not material to the Sinclair case. Rather, Dallas' testimony in this regard was merely cumulative of Thomas'.

Defendant attempts to demonstrate the materiality of Woods' testimony regarding his school attendance through his post-verdict interviews with jurors by appending an Affidavit of Keith A. Ward, Defendant's trial counsel, to his motion as Exhibit A.<sup>1</sup> In Exhibit A, Ward states that, "[b]ased on my conversations with those three jurors, there is very little doubt in my mind that the jury's verdict would have been 'not guilty' had it known the truth." Thus, Defendant claims that introduction of the school records in question would probably have resulted in Sinclair's acquittal.

However, Rule 606(b) of the Federal Rules of Evidence makes clear that any evidence of a statement by a juror concerning "any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith" is inadmissible for the purposes of invalidating or supporting a verdict. The information

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<sup>1</sup> As to the issue of whether Dallas Woods was a material witness, Defendant simply states conclusorily that "[t]here is no question that these witnesses were material. As discussed above, these were the only witnesses who explicitly refuted the testimony provided by Mr. Sinclair during the McMahon trial." However, as discussed by the Court herein, Woods' testimony was merely cumulative of Ms. Thomas'. Further, the testimony of Young was clearly inconsistent with that of Sinclair. Thus, the Court concludes that Dallas was not a material witness.

gleaned by Ward during his post-verdict interviews with jurors clearly concerns the jury's deliberations and what influenced each juror to assent to or dissent from the verdict. Therefore, Defendant may not buttress his claim of materiality with evidence of statements from jurors.

The jury's note during its deliberations about Woods' school attendance is part of the record and is admissible for the purposes of determining materiality. However, regardless of how one interprets the significance of the jury's question, the Court's determination that Woods' statement about his school attendance was not material is unaffected. For purposes of this Court's determination of materiality, whether Woods was at school on September 9 or elsewhere, does not affect the truth or falsity of Sinclair's statement that he observed a man bringing the firearm in question into the apartment occupied by McMahon and Thomas on September 9.

In summary, the Court concludes that the newly discovered evidence was not material to the issues involved as it merely calls into question testimony that was not itself material and that this evidence could have been discovered during trial. Accordingly, Defendant's motion for a new trial is denied.

### III.

Rule 29(c) of the Federal Criminal Rules allows the Court, upon the making of a motion for judgment of acquittal, to set aside a jury verdict of guilty and enter a judgment of acquittal if the evidence at trial was insufficient to sustain the conviction. The



entry of a judgment of acquittal is mandated if, "taking the evidence -- both direct and circumstantial, together with the reasonable inferences to be drawn therefrom -- in the light most favorable to the government, a reasonable jury could [not] find the defendant guilty beyond a reasonable doubt." United States v. Urena, 27 F.3d 1487, 1489 (10th Cir.), cert. denied, 115 S. Ct. 455 (1994).

To convict Sinclair on the perjury count, the Government had to prove beyond a reasonable doubt that his testimony was false, that he knowingly testified to the false statement, and that the false statement was material. 18 U.S.C. § 1623. Thus, on the perjury count, the Government needed to show that Sinclair's statement, that he observed an unknown man carrying a firearm into the McMahon/Thomas apartment on September 9 was false, that Sinclair knew that his statement was false, and that the statement was material to the trial.

In support of his motion for a judgment of acquittal, Sinclair simply reasserts the arguments presented in his motion for a new trial. He argues that his conviction was the result of false testimony by Thomas and Woods. The evidence presented by the Government against Sinclair was recited above. The Court holds that, taking the evidence in the light most favorable to the Government, the evidence presented at trial was sufficient to sustain Sinclair's conviction on both counts.<sup>2</sup>

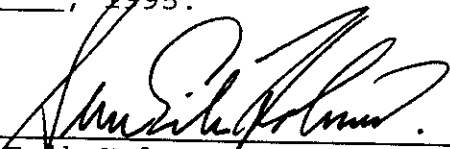
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<sup>2</sup> In his motion for judgment of acquittal, Sinclair does not address the conspiracy count.

In conclusion, the Court hereby denies Defendant's Motion for a New Trial and, alternatively, for a Judgment of Acquittal (Docket # 89).

IT IS SO ORDERED.

This 8<sup>TH</sup> day of JANUARY, 1995.

  
Sven Erik Holmes  
United States District Judge

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

FILED  
JAN - 9 1996  
Richard M. Lawrence, Court Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 95-CR-083-001-B

MARIO ANDRADE-ARROYO  
Defendant.

ENTERED ON DOCKET

DATE 1-9-96

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, MARIO ANDRADE-ARROYO, was represented by Regina Stephenson.

The defendant pleaded guilty to count(s) 1 of the Indictment on September 21, 1995. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

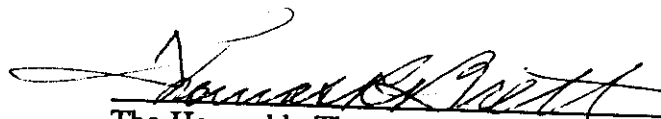
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
21 USC 841(a)(1), and 841(b)(1)(B)(i)	Conspiracy to Distribute Heroin	05/26/95	1

As pronounced on January 5, 1996, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Indictment, which shall be due immediately.

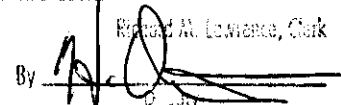
It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 9<sup>th</sup> day of January, 1996.

  
The Honorable Thomas R. Brett, Chief  
United States District Judge

Defendant's SSN: 634-01-9983  
Defendant's Date of Birth: 09/05/62  
Defendant's mailing address: 3535 W. Chapel, Dallas, TX 75220  
Defendant's residence address: Custody Bureau of Prisons, Dallas, TX

United States District Court )  
Northern District of Oklahoma ) SS  
I hereby certify that the foregoing  
is a true copy of the original on file  
in this Court.

By   
Richard M. Lawrence, Clerk

Defendant: MARIO ANDRADE-ARROYO  
Case Number: 95-CR-083-001-B

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 60 months.

The Court makes the following recommendations to the Bureau of Prisons: That the Bureau of Prisons designate an institution in the Dallas/Ft. Worth, Texas, area, as the place of confinement.

The defendant is remanded to the custody of the United States Marshal.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: MARIO ANDRADE-ARROYO  
Case Number: 95-CR-083-001-B

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 4 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
6. The defendant shall comply with the rules and regulations of the INS, and if deported from this country, either voluntary or involuntary, he shall not reenter the United States illegally. Upon any re-entry into the United States during the period of Court-ordered supervision, the defendant shall report to the nearest U. S. Probation Office within 72 hours.

### **STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: MARIO ANDRADE-ARROYO  
Case Number: 95-CR-083-001-B

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	23
Criminal History Category:	III
Imprisonment Range:	60 months to 71 months
Supervised Release Range:	4 to 5 years
Fine Range:	\$ 10,000 to \$ 2,000,000
Restitution:	\$ N/A

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

*LA*

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

**FILED**  
JAN 4 1996

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

v.

AARON DWIGHT HABBEN  
Defendant.

Case Number 95-CR-127-001-H  
ENTERED ON DOCKET  
DATE JAN 05 1996

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, AARON DWIGHT HABBEN, was represented by Craig Bryant.

The defendant pleaded guilty to count(s) 1 and 2 of the Indictment on October 17, 1995. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):


<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 2113(a)	Bank Burglary	01/20/95	1
18 USC 2315 & 2	Receipt of Stolen Securities and Aiding & Abetting	02/28/95	2

As pronounced on December 19, 1995, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100.00, for count(s) 1 and 2 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 3RD day of JANUARY, 1995.

  
The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 480-78-9589

Defendant's Date of Birth: 04/18/70

Defendant's residence and mailing address: 7310 Cuming Street, Lincoln, NE 68507

Defendant: AARON DWIGHT HABBEN  
Case Number: 95-CR-127-001-H

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 41 months as to Counts 1 and 2, to run concurrently, each to the other. Said sentence shall run concurrent to the term imposed in Case 95-CR-089-H.

The defendant is remanded to the custody of the United States Marshal.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal



Defendant: AARON DWIGHT HABBEN

Case Number: 95-CR-127-001-H

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years as to Counts 1 and 2 to run concurrently.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: AARON DWIGHT HABBEN  
Case Number: 95-CR-127-001-H

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$9,260.00 on Count 1.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
Commercial Federal Savings Bank Attn: Jennifer Hower 2120 S. 72nd St. Omaha, NE 68124	\$555.00
American Express Travel Related Services Attn: Heidi Jarman 801 S. Grand Ave. Los Angeles, CA 90017	\$3,980.00
Bank One Arizona Attn: Susan Arkley P.O. Box 71 A-446 Phoenix, AZ 85001	\$4,725.00

Payments of restitution are to be made to the United States Attorney for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: AARON DWIGHT HABBEN  
Case Number: 95-CR-127-001-H

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	16
Criminal History Category:	IV
Imprisonment Range:	33 months to 41 months - Cts. 1 & 2
Supervised Release Range:	2 to 3 years - Cts. 1 & 2
Fine Range:	\$ 5,000 to \$ 50,000 - Cts. 1 & 2
Restitution:	\$ 61,740.07

The fine is waived or is below the guideline range because of the defendant's inability to pay.

Full restitution is not ordered for the following reason(s): Because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

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UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

CHERIE ANN BURTON  
Defendant.

Case Number 95-CR-089-002-H

ENTERED ON DOCKET

DATE JAN 6 5 1996

**FILED**  
JAN 4 1996  
Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, CHERIE ANN BURTON, was represented by Scott Troy.

On motion of the United States the court has dismissed count(s) 1 and 5 of the Superseding Indictment.

The defendant pleaded guilty to count(s) 6 of the Superseding Indictment on September 15, 1995. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

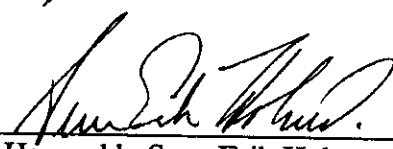
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1028(a)(3)	Possession With Intent to Use Five or More False Identification Documents	07/07/95	6

As pronounced on December 19, 1995, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 6 of the Superseding Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 3rd day of JANUARY, 1996.

  
The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 568-91-0253

Defendant's Date of Birth: 04/20/76

Defendant's residence and mailing address: 4868 Admiration Drive, Virginia Beach, VA 23464

Defendant: CHERIE ANN BURTON  
Case Number: 95-CR-089-002-H

### PROBATION

The defendant is hereby placed on probation for a term of 2 year(s).

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
4. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
5. The defendant shall perform 100 hours of community service.

### STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: CHERIE ANN BURTON  
Case Number: 95-CR-089-002-H

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 1,000.00. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

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Defendant: CHERIE ANN BURTON  
Case Number: 95-CR-089-002-H

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	6
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months - Ct. 6
Supervised Release Range:	1 year - Ct. 6
Fine Range:	\$ 500 to \$ 5,000 - Ct. 6
Restitution:	\$ N/A

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

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UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

AARON DWIGHT HABBEN  
Defendant.

Case Number 95-CR-089-001-H

ENTERED ON DOCKET

DATE JAN 05 1996

**FILED**  
JAN 4 1996  
Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, AARON DWIGHT HABBEN, was represented by Craig Bryant.

On motion of the United States the court has dismissed count(s) 3, 4, and 6 of the Superseding Indictment.

The defendant pleaded guilty to count(s) 1 and 2 of the Superseding Indictment on September 18, 1995. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):


<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 371	Conspiracy	07/06/95	1
18 USC 2314 and 2(b)	Interstate Transportation of Property Taken by Fraud and Causing a Criminal Act	06/14/95	2

As pronounced on December 19, 1995, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100.00, for count(s) 1 and 2 of the Superseding Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 3RD day of JANUARY, 1996.

  
The Honorable Sven Erik Holmes  
United States District Judge

Defendant's SSN: 480-78-9589

Defendant's Date of Birth: 04/18/70

Defendant's residence and mailing address: 7310 Cuming Street, Lincoln, NE 68507



Defendant: AARON DWIGHT HABBEN  
Case Number: 95-CR-089-001-H

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 41 months as to Counts 1 and 2, each count to run concurrently, each to the other. The sentence imposed shall run concurrently to the term imposed in Case 95-CR-127-H.

The defendant is remanded to the custody of the United States Marshal.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: AARON DWIGHT HABBEN  
Case Number: 95-CR-089-001-H

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years as to Counts 1 and 2, counts to run concurrently, each to the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
6. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

### **STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: AARON DWIGHT HABBEN  
Case Number: 95-CR-089-001-H

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the total amount of \$240.00 on Count 1 and \$250.00 on Count 2.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
Enterprise Car Rental Attn: Jennifer Spears 433 E. Memorial Oklahoma City, OK 73114	\$240.00
Bank of America 1825 E. Buckeye Rd. Phoenix, AZ 85034	\$250.00

Payments of restitution are to be made to the United States Attorney for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: AARON DWIGHT HABBEN  
Case Number: 95-CR-089-001-H

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	16
Criminal History Category:	IV
Imprisonment Range:	33 months to 41 months - Cts. 1 & 2
Supervised Release Range:	2 to 3 years - Cts. 1 & 2
Fine Range:	\$ 5,000 to \$ 50,000 - Cts. 1 & 2
Restitution:	\$ 3,119.91

The fine is waived or is below the guideline range because of the defendant's inability to pay.

Full restitution is not ordered for the following reason(s): Because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

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IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILED

JAN 4 1996

Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT  
NORTHERN DISTRICT OF OKLAHOMA

WILLIAM T. LAWRENCE, JR.,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

No. 93-CR-185-C ✓

ENTERED ON DOCKET

DATE JAN - 5 1996

ORDER

Currently pending before the Court is the motions filed by petitioner, William T. Lawrence, Jr., seeking the return of forfeited monies in the amount of \$89,000.00. Lawrence appears to base his claim on Constitutional grounds, invoking the Fifth Amendment protection against double jeopardy.

In May of 1988, the United States, as plaintiff, filed a civil forfeiture In Rem complaint against \$80,002.17, pursuant to 21 U.S.C. § 881(a)(6). A Stipulation for Compromise was entered into between the United States and Lawrence, as well as others, on March 15, 1989. An Agreed Judgment of Forfeiture was entered on March 31, 1989, forfeiting to the United States the amount of \$75,502.17. The remaining \$4,500.00 of the seized money was returned to Lawrence and the other claimants on March 28, 1989.

The record indicates that \$31,000.00 was seized from Lawrence. The Court does not understand why Lawrence now claims an entitlement to \$89,000.00. Lawrence offers no explanation for the discrepancy between the amount he forfeited and the amount which he now claims.

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On May 5, 1994, a jury found Lawrence guilty of Conspiracy to Possess with Intent to Distribute and to Distribute Cocaine, in violation of 21 U.S.C. §§ 846 and 841(a)(1). Lawrence was sentenced on October 24, 1994.

Lawrence apparently claims that the above forfeiture, coupled with this subsequent conviction allegedly arising from the "same conduct" that provided the grounds for the forfeiture, violated the Fifth Amendment to the Constitution. The Court finds this argument meritless.

The record shows that Lawrence, among others, voluntarily entered into a Stipulation for Compromise with the United States concerning the forfeiture action. In the Stipulation, Lawrence agreed to: 1) consent to the forfeiture of the money that was the subject of the civil forfeiture action, 2) release and forever discharge any and all claims which Lawrence may have against the United States on account of the arrest and seizure of the money, and 3) permit the Stipulation to forever bar any action or claim in any tribunal concerning the money. Lawrence further acknowledged in the Stipulation that its purpose was to forfeit \$75,502.17 and protect the United States from any future claims related to the forfeiture. Furthermore, in the Agreed Judgment of Forfeiture, the Court ordered the claims of Lawrence dismissed with prejudice, and the sum of \$75,502.17 condemned as forfeited to the United States. It is therefore clear that Lawrence effectively abandoned his claim to the money now at issue and voluntarily consented to its

forfeiture. Since Lawrence did not contest the forfeiture of his money in the civil proceeding, jeopardy did not attach.

It is true that certain civil forfeiture proceedings can constitute a form of "punishment" for Fifth and Eighth Amendment purposes. See, U.S. v. Halper, 490 U.S. 435 (1989); Austin v. U.S., 113 S.Ct. 2801 (1993). Compare, U.S. v. \$405,089.23 U.S. Currency, 33 F.3d 1210, 1219 (9th Cir. 1994) (civil forfeiture under 21 U.S.C. § 881(a)(6) constitutes "punishment"). However, this Court adopts the view held by other Circuit and District Courts that the forfeiture of Lawrence's money as proceeds of criminal activity pursuant to 21 U.S.C. § 881(a)(6) does not constitute "punishment." U.S. v. Salinas, 65 F.3d 551, 553 (6th Cir. 1995); U.S. v. Tilley, 18 F.3d 295, 300 (5th Cir. 1994), cert. denied, 115 S.Ct. 573 (1994); U.S. v. Perez, 902 F.Supp. 1318, 1321-1322 (D.Colo. 1995). See also, U.S. v. Alexander, 32 F.3d 1231, 1236 (8th Cir. 1994) (forfeiture of proceeds from racketeering activity cannot be considered punishment, as forfeiture simply parts owner from fruits of criminal activity).

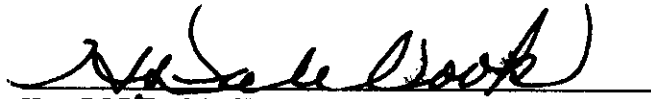
Since the forfeiture of Lawrence's money in March of 1989 was not a form of "punishment," jeopardy could not have attached in the forfeiture proceeding. Lawrence's subsequent prosecution and conviction in 1994 were not barred by virtue of double jeopardy.

Moreover, it appears from the record that the conduct upon which Lawrence's 1994 federal conviction was based is different than that which formed the basis for the forfeiture in 1989. Thus, even if this Court were to find that the 1989 forfeiture

constituted "punishment" for the purposes of Fifth and Eighth Amendment analysis, the result in the case would be the same. Following the imposition of penalties based upon illegal conduct, the Constitution does not prohibit the government from seeking further sanctions based upon different conduct occurring at a different time, even if such conduct was part of the same overall scheme. Hence, Lawrence's constitutional claims are without merit.

Accordingly, Lawrence's motions for return of property are hereby DENIED.

IT IS SO ORDERED this 7<sup>th</sup> day of January, 1996.

  
H. DALE COOK  
U.S. District Judge



IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

FILE

JAN 4 1996

Richard M. Lawrence, C  
U. S. DISTRICT COU  
NORTHERN DISTRICT OF OKLAH

LAROAN VERNERS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

No. 93-CR-1-2-C ✓

ENTERED ON DOCKET

DATE JAN - 5 1996

ORDER

Currently pending before the Court is the motion filed by petitioner, Laroan Verner, seeking return of property pursuant to Rule 41(e) of the Federal Rules of Criminal Procedure.

On January 5, 1993, the Drug Enforcement Administration (DEA) seized \$43,646.00, which is the subject property of Verner's instant motion. A notice of seizure letter was sent by certified mail to Verner's mother's house on February 16, 1993, and notice of seizure was published in USA Today for three successive weeks. The publication stated that the last day to file a claim was March 16, 1993. Further, on March 18, 1993, three additional notice of seizure letters were sent by certified mail to Verner's mother's house, each addressed to a different person. No one responded to these notice letters, nor did anyone respond to the February 24, 1993, publication in USA Today advising of the intent to forfeit the money now at issue. The money was administratively forfeited by the DEA, with Declaration of Forfeiture entered on April 30, 1993.

It is undisputed that Verner was arrested on February 4, 1993, and remained incarcerated during the entire time in which the government sought forfeiture. Rather than addressing the notice of

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forfeiture to the facility in which Verners was being held or to Verners' attorney, the DEA instead sent notices to Verners' prior residence.

Verners seeks the return of the money at issue based upon the grounds that the government failed to provide him with reasonable notice of the forfeiture proceeding, in violation of due process. The Court finds merit in Verners' claim.

The Supreme Court stated in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950), that an "elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." The fundamental right to be heard has little worth without such notice. Moreover, the Supreme Court mandated that due process requires the government to send notice by "mail or other means as certain to ensure actual notice." Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 800 (1983). "Due process does not require, however, that the interested party actually receive notice." U.S. v. 51 Pieces of Real Property, Roswell, N.M., 17 F.3d 1306 (10th Cir. 1994). Due process requires the government to act reasonably in selecting means that are likely to inform interested persons of the nature and pendency of the action.

In the instant case, the government's reliance on documents sent to Verners' former address is not sufficient. These mailings do not constitute notice "reasonably calculated" to apprise Verners

of the forfeiture action, given the fact that he was incarcerated at the time. See, U.S. v. \$54,889.69 In U.S. Currency, No. 93-1160, 1994 WL 318220 (10th Cir. 1994).


In Robinson v. Hanrahan, 409 U.S. 38 (1972), the State of Illinois mailed notice of forfeiture to the appellant's last known address following his arrest on a robbery charge. The appellant remained incarcerated throughout the entire forfeiture proceedings, which resulted in the forfeiture and sale of his vehicle. The Supreme Court noted that the State knew that appellant was not at the address to which notice of forfeiture was sent. Furthermore, given his incarceration, the appellant had no way of getting to that address during the forfeiture proceedings. The Court held that, "[u]nder these circumstances, it cannot be said that the State made any effort to provide notice which was 'reasonably calculated' to apprise appellant of the pendency of the forfeiture proceedings." Id. at 31-32.

This Court is also mindful of the remarks made by the Tenth Circuit in Aero-Medical, Inc. v. U.S., 23 F.3d 328 (10th Cir. 1994). The Circuit Court noted that "[d]ue process protections ought to be diligently enforced, and by no means relaxed, where a party seeks the traditionally disfavored remedy of forfeiture." Id. at 331, (quoting U.S. v. Borromeo, 945 F.2d 750, 752 (4th Cir. 1991)).

In the instant case, it is apparent that the government knew that Verners was incarcerated during the pendency of the forfeiture action. See, In re "Agent Orange", 597 F.Supp. 740, 796-797

(E.D.N.Y. 1984) (knowledge of employees of a government agency may be imputed to other government employees if some relationship exists between them). Further, the government failed to provide any evidence demonstrating that Verners received actual notice of the forfeiture action. Since adequate notice was not given to Verners, the DEA administrative forfeiture must be and hereby is vacated. This order is without prejudice to the government to institute another administrative forfeiture proceeding within sixty days of this order. Failure to commence such forfeiture proceedings within this time period shall cause the property to be returned to the petitioner as requested.

IT IS SO ORDERED this 4<sup>th</sup> day of January, 1996.

  
H. DALE COOK  
U.S. District Judge

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

FILED

JAN - 2 1996

UNITED STATES OF AMERICA

Richard M. Lawrence, Court Clerk  
U.S. DISTRICT COURT

v.

Case Number 95-CR-067-001-B

JAMES FARMER LEWIS  
Defendant.

ENTERED ON DOCKET

DATE 1-3-96

(AMENDED AS TO NAME ONLY)  
**JUDGMENT IN A CRIMINAL CASE**  
(For Offenses Committed On or After November 1, 1987)

The defendant, JAMES FARMER LEWIS, was represented by Jim H. Heslet.

The defendant pleaded guilty to count(s) 1 of the Indictment on December 18, 1995. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

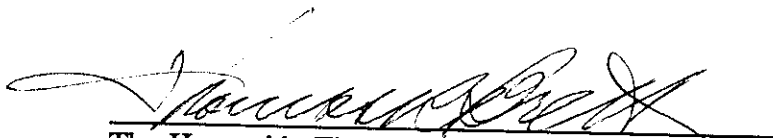
Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 659	Theft of Interstate Shipment	08/10/91	1

As pronounced on December 18, 1995, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50, for count(s) 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 2<sup>nd</sup> day of January, 1995.

  
The Honorable Thomas R. Brett, Chief  
United States District Judge

Defendant's SSN: 487-48-1887  
Defendant's Date of Birth: 05/08/45  
Defendant's mailing address: 2101 N. Grant, Springfield, MO 65803  
Defendant's residence address: FCI, Texarkana

United States District Court )  
Northern District of Oklahoma ) ss  
I hereby certify that the foregoing  
is a true copy of the original on file  
in this Court.

Richard M. Lawrence, Clerk

By   
Deputy

Defendant: JAMES FARMER LEWIS  
Case Number: 95-CR-067-001-B

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 5 months. Said sentence to run concurrent with the remainder of the 27 month sentence imposed in SD/IL, case 93-30072-01 WLB. The Court notes that imposition of a 5 month term will effectively increase Lewis' internment by approximately 3 months to 30 months of total punishment, the maximum term allowable had all the offense conduct been known at his original sentencing in the Southern District of Illinois. The Court notes further that this sentence does not constitute a departure, because the defendant has been credited for guideline purposes pursuant to USSG §5G1.3(b) with the 25 months already served in federal custody..

The defendant is remanded to the custody of the United States Marshal.

### RETURN

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: JAMES FARMER LEWIS  
Case Number: 95-CR-067-001-B

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant is prohibited from employment as a driver in the interstate trucking industry.

### **STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: JAMES FARMER LEWIS  
Case Number: 95-CR-067-001-B

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 2,000.00. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

•



Defendant: JAMES FARMER LEWIS  
Case Number: 95-CR-067-001-B

**STATEMENT OF REASONS**

No Presentence Report was ordered as the Court found it had, pursuant to Fed. R. Crim. P. 32(b)(1)(A), sufficient information to impose an appropriate sentence.

**Guideline Range Determined by the Court:**

Total Offense Level:	14
Criminal History Category:	III
Imprisonment Range:	21 months to 27 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 4,000 to \$ 40,000
Restitution:	\$ N/A

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

UNITED STATES DISTRICT COURT  
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 95-CR-041-001-K

MICHAEL KNOX  
Defendant.

ENTERED ON DOCKET

DATE 1-2-96

**FILED**

JAN 02 1996

**JUDGMENT IN A CRIMINAL CASE**

(For Offenses Committed On or After November 1, 1987) Richard M. Lawrence, Clerk  
U. S. DISTRICT COURT

The defendant, MICHAEL KNOX, was represented by Art Fleak.

On motion of the United States the court has dismissed count(s) 3, 6, and 7 of the Indictment.

The defendant was found guilty on count(s) 1, 2, 4, and 5 of the Indictment on August 23, 1995 after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

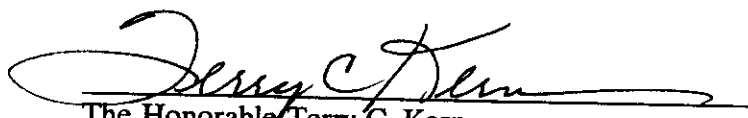
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 371	Conspiracy	01/27/93	1
18 USC 1341 and 18:2	Mail Fraud and Aiding & Abetting	02/27/92	2, 4, and 5

As pronounced on December 21, 1995, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 200.00, for count(s) 1, 2, 4, and 5 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 28 day of December, 1995.

  
The Honorable Terry C. Kern  
United States District Judge

Defendant's SSN: 446-70-9370

Defendant's Date of Birth: 09/03/68

Defendant's residence and mailing address: 4115 E. 31st St., Tulsa, OK 74135

Defendant: MICHAEL KNOX  
Case Number: 95-CR-041-001-K

Judgment--Page 2 of 5

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 42 months as to Counts 1, 2, 4, and 5, to run concurrently, each with the other.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 p.m. on January 22, 1996.

### RETURN

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal

Defendant: MICHAEL KNOX  
Case Number: 95-CR-041-001-K

Judgment--Page 3 of 5

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years as to Counts 1, 2, 4, and 5, all counts to run concurrently, each with the other.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
5. The defendant shall be prohibited from engaging in any form of employment related to the telemarketing industry. All employment shall be approved, in advance, by the U.S. Probation Office.

### STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: MICHAEL KNOX  
Case Number: 95-CR-041-001-K

**RESTITUTION AND FORFEITURE**

**RESTITUTION**

The defendant shall make restitution in the amount of \$7,800 as to Count 1 and \$4,200 as to Count 2, for a total of \$12,000.

Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

The defendant shall make restitution to the following persons in the following amounts:

<b><u>Name of Payee</u></b>	<b><u>Amount of Restitution</u></b>
Equity Fire and Casualty 1204 South Harvard Tulsa, OK 74112	\$7,800.00
Mid-Continent Casualty Co. 1620 So. Boulder Tulsa, OK 74119	\$4,200.00

Payments of restitution are to be made to the United States Attorney for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: MICHAEL KNOX  
Case Number: 95-CR-041-001-K

**STATEMENT OF REASONS**

The court adopts the factual findings and guideline application in the presentence report.

**Guideline Range Determined by the Court:**

Total Offense Level:	19
Criminal History Category:	III
Imprisonment Range:	36 months to 47 months - Cts. 1, 2, 4, & 5
Supervised Release Range:	2 to 3 years - Cts. 1, 2, 4, & 5
Fine Range:	\$ 6,000 to \$ 60,000 - Cts. 1, 2, 4, & 5
Restitution:	\$ 40,726.05

The fine is waived or is below the guideline range because of the defendant's inability to pay.

Full restitution is not ordered for the following reason(s): Because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

United States District Court )  
Northern District of Oklahoma ) SS  
I hereby certify that the foregoing  
is a true copy of the original on file  
in this Court.  
Richard M. Lawrence, Clerk  
By \_\_\_\_\_ Deputy

**UNITED STATES DISTRICT COURT**  
**Northern District of Oklahoma**

**FILED**

JAN 2 1996

Richard M. Lawrence, Court Clerk  
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 93-CR-163-002-E

ENTERED ON DOCKET

DATE 1/2/96JUAN ANTONIO MATA  
Defendant.

**REVISED ON REMAND**  
**JUDGMENT IN A CRIMINAL CASE**  
**(For Offenses Committed On or After November 1, 1987)**

The defendant, JUAN ANTONIO MATA, was represented by Curtis Biram.

The defendant was found guilty on count(s) 2 of the Indictment on February 23, 1994 after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

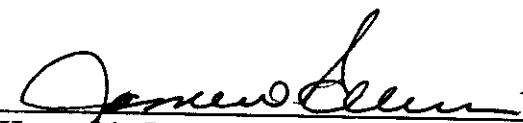
<u>Title &amp; Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
21 USC 846; 841(a)(1); and 841(b)(1)(B)(vii)	Conspiracy to Possess and Distribute 100 Kilograms or More of Marijuana	11/03/93	2

As pronounced on December 19, 1995, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 2 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 28<sup>th</sup> day of December, 1995.

  
 The Honorable James O. Ellison  
 United States District Judge

Defendant's SSN: 448-68-8080  
 Defendant's Date of Birth: 02/12/62  
 Defendant's mailing address: 514 S. 17th Street, Donna, TX 78537  
 Defendant's residence address: FCI, Three Rivers, P.O. Box 4000, Three Rivers, TX 78701

United States District Court )  
 Northern District of Oklahoma ) SS  
 I hereby certify that the foregoing  
 is a true copy of the original on file  
 in this Court.

Richard M. Lawrence, Clerk

By Bruce M. Callough  
 Deputy

Defendant: JUAN ANTONIO MATA  
Case Number: 93-CR-163-002-E

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 80 months.

The defendant is remanded to the custody of the United States Marshal.

**RETURN**

I have executed this Judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this Judgment.

\_\_\_\_\_  
United States Marshal

By \_\_\_\_\_  
Deputy Marshal



Defendant: JUAN ANTONIO MATA  
Case Number: 93-CR-163-002-E

### **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.

### **STANDARD CONDITIONS OF SUPERVISION**

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: JUAN ANTONIO MATA  
Case Number: 93-CR-163-002-E

**FINE**

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 3,500.00. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid during the term of supervised release.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: JUAN ANTONIO MATA  
Case Number: 93-CR-163-002-E

### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report except: Amends report as to total amount of marijuana, finding that defendant conspired to distribute 835 pounds for a Total Offense Level of 26, Criminal History Category of II, for a Guideline Range of 70 - 87 months.

**Guideline Range Determined by the Court:**

Total Offense Level:	26
Criminal History Category:	II
Imprisonment Range:	70 months to 87 months - Ct. 2
Supervised Release Range:	4 to 5 years - Ct. 2
Fine Range:	\$ 12,500 to \$ 2,000,000 - Ct. 2
Restitution:	\$ N/A

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

*1 for*